

United States
Circuit Court of Appeals
For the Ninth Circuit.

9

THE UNITED STATES NATIONAL BANK OF CENTRALIA, a Banking Association, and A. R. TITLOW,
as Receiver of Said Bank,

Appellants,

vs.

THE CITY OF CENTRALIA, a Municipal Corporation,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the Western District of Washington,
Southern Division.

Filed

JUL 21 1916

F. D. Monckton,
Clerk.

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

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STEPHEN V. CAREY, Esquire, Pioneer Building,
Seattle, Washington,

Solicitors for the Appellee. [1*]

*In the District Court of the United States for the
Western District of Washington, Southern
Division.*

IN EQUITY—No. 25—E.

THE CITY OF CENTRALIA, a Municipal Cor-
poration,

Plaintiff,

vs.

THE UNITED STATES NATIONAL BANK OF
CENTRALIA and A. R. TITLOW, as Re-
ceiver of said Bank,

Defendants.

*Page-number appearing at foot of page of original certified Record.

Praeipce of the Defendants for Record.

To Frank L. Crosby, Clerk of Said Court:

Kindly prepare, certify and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco a typewritten transcript of the record upon appeal in the above-entitled cause containing the following portions of the record in the above-entitled cause, to wit (omitting all captions, endorsements, verifications, etc., excepting file-marks).

1. Amended bill of complaint.
2. Answer to the amended bill of complaint.
3. Stipulation for substitution of parties and order allowing same.
4. Decree.
5. Defendants' exceptions to decree.
6. Statement of evidence and order approving same.
7. Petition for appeal.
8. Assignment of errors.
9. Order allowing appeal.
10. Citation.
11. Praeipce of defendants for record.
12. Certificate of Comptroller of Currency directing appeal.
13. Notice of filing defendants proposed statement of testimony. [2]

Dated February 17, 1916.

R. P. OLDHAM,
R. C. GOODALE,
Attorneys for Defendants.

Copy of the within praecipe received and service acknowledged this 19th day of February, 1916.

PILES, HOWE & CAREY and
W. N. BEALS,

Attorneys for Plaintiff.

Per S.H.P.

(Filed Feb. 18, 1916). [3]

Amended Bill of Complaint.

To the Honorable the Judges of the District Court
of the United States for the Western District
of Washington, Southern Division, Sitting in
Equity:

The City of Centralia, a municipal corporation, created and existing under the laws of the State of Washington and operating under a commission form of government provided by Chapter 116 of the Laws of 1911 of the State of Washington, located in the county of Lewis, in the Southern Division of the Western District of Washington, with leave the court first had and obtained, brings this its amended bill of complaint against The United States National Bank of Centralia, Washington, a national banking association, located and doing business in the city of Centralia, in the county of Lewis, in the Southern Division of the Western District of Washington, and against C. A. Snowden, as receiver of said bank, said receiver being a citizen of the State of Washington and a resident of the county of Pierce in the Southern Division of the Western District of said State; and thereupon your

orator complains and shows unto your Honors: [4]

I.

Your orator at all times herein mentioned was and it now is a municipal corporation, with a population now exceeding fifteen thousand, organized and existing under the laws of the State of Washington, located in the county of Lewis, in the Southern Division of the Western District of Washington, and operating under a commission form of government as provided by Chapter 116 of the Laws of 1911 of the State of Washington.

II.

At all times herein mentioned The United States National Bank of Centralia, Washington, was and it still is a national banking association, duly organized and existing under the National Bank Act of the United States of America, located and having its principal and only place of business in the City of Centralia, county of Lewis, in the Southern Division of the Western District of Washington.

III.

On or about the 21st day of September, 1914, The United States National Bank of Centralia, Washington, being then insolvent, and the Comptroller of the Currency being satisfied of such insolvency, Francis R. Chapman was duly appointed by said comptroller receiver of said bank, to close up its affairs as provided by law. Francis R. Chapman duly qualified as such receiver, took possession and control of all the money of said bank and all its property and assets of every character, and continued to act as such receiver until on or about the

17th day of November, 1914, when the defendant C. A. Snowden was duly appointed by the Comptroller of the Currency as receiver of said bank to succeed said Chapman. The defendant Snowden thereupon duly qualified as such receiver and assumed possession and control of all said bank's moneys, property and assets, and ever since said date he has been [5] and still is the duly appointed, qualified and acting receiver thereof; and ever since on or about September 21, 1914, said defendant bank has been and it still is insolvent.

IV.

At all times in this bill mentioned the National Bank of Commerce of Seattle, Washington, was a national banking association, located and doing business at Seattle, Washington, and was the regular correspondent and reserve bank of Seattle, Washington, of the United States National Bank of Centralia, Washington.

V.

Pursuant to a vote of its electors, the City of Centralia prior to July 1st, 1914, provided for the issuance and sale of certain water or utility bonds of the par value of \$300,000.00, for the purpose of purchasing a privately owned water system then operated in said city and converting the same from a pumping to a gravity system and otherwise improving said system of water-works, for the use and benefit of said city and its inhabitants. Said issue of bonds was sold to Carstens & Earles, Inc., of Seattle, Washington, to be delivered by the city to the purchaser from time to time as funds were

needed to carry on the work for which said bonds were voted and issued.

VI.

On or about the 11th day of July, 1914, George B. Mason, who was then the duly elected or appointed, qualified and acting treasurer of the said City of Centralia, delivered one hundred and five (105) of said water bonds of the par value of \$52,500.00 (the same being the balance of said total issue of \$300,000.00 par value) to the defendant bank, for the purpose of having it collect the amount due from Carstens & Earles Inc., pursuant to the terms of said sale. Thereupon George B. Mason, as [6] such treasurer, drew a draft on Carstens & Earles, Inc., for the amount due, with directions to the defendant bank to deliver the bonds to Carstens & Earles, Inc., upon the payment of the amount of the draft and accrued interest on the bonds to the date of delivery. The defendant bank, on or about the 12th day of July, 1914, transmitted the bonds and draft to Carstens & Earles, Inc., at Seattle, Washington, through the medium of its then regular correspondent and reserve bank in said city, to wit, the National Bank of Commerce of Seattle, Washington, which last named bank delivered the bonds to and received the sum of \$50,911.88 lawful money of the United States from said Carstens & Earles, Inc., on or about July 13, 1914.

VII.

The National Bank of Commerce of Seattle after it delivered said 105 bonds and collected the purchase price thereof, as aforesaid, credited The

United States National Bank of Centralia, Washington, with the sum of \$50,911.88 and so advised said bank. Thereupon The United States National Bank of Centralia charged said sum of \$50,911.88 to the National Bank of Commerce of Seattle, and deposited said sum with itself to the credit of George B. Mason, as such city treasurer.

VIII.

At the time defendant bank received said 105 bonds it knew the purpose for which they had been issued and at the time it collected said sum of \$50,911.88 and deposited the same with itself, as in this bill hereinbefore set forth, it knew that the sum so collected and deposited was the proceeds of the sale of said bonds and that the money so collected and deposited was held by the said city treasurer as a public officer in trust for your orator and that such money could not be used for any purpose other than the purchase and improvement of said system of waterworks. [7]

IX.

On or about February 6, 1912, the defendant bank was designated as a depository for the safekeeping of your orator's funds to the extent of \$10,000.00. upon defendant bank complying with the laws of the State of Washington respecting municipal deposits. Thereafter in the year 1912 defendant bank filed with the city clerk of your orator a surety bond in the maximum amount of deposits designated by the city treasurer to be carried in defendant bank, to wit, \$10,000.00, conditioned as provided by law. Defendant bank never executed to your

orator, to its city treasurer, nor to any other officer of the City of Centralia, or at all, any bond other than said bond of \$10,000.00, nor did it at any time file with the clerk of said city, or any other officer thereof, or at all, a contract as provided by law whereby it agreed to pay not less than two per cent, on the average daily or other balances, where such balances exceeded \$1,000.00 of all municipal funds kept by said treasurer in defendant bank as such depository. The deposit of said sum of \$50,911.88 by defendant bank with itself and to the credit of the city treasurer, as in this bill set forth, was without authority of law and in violation of Sections (77-681), (77-683), (135-631), (135-633) and (135-635) Pierce's Code 1912, and by reason of the facts as in this bill set forth, title to said money never passed to the defendant bank, but the same always remained the property of your orator, held in trust by said bank and its receiver for the use and benefit of your orator.

X.

Your orator further shows unto your Honors that prior to the first day of April, 1914, the City of Centralia was indebted to numerous persons in various sums of money, said indebtedness being evidenced by outstanding warrants of said city. [8] In the month of April, 1914, said city provided for the issuance and sale of its refunding bonds for the purpose of taking up and retiring said outstanding warrants, and the Portland Trust and Savings Bank, of Portland, Oregon, became the purchaser of said refunding bonds to the amount of \$118,000.00

par value. To carry out the terms and conditions of said sale, it was agreed between your orator and the Portland Trust and Savings Bank that the defendant bank should act as trustee for the purpose of looking after the proper cancellation of certain of said outstanding warrants which were to be retired from the proceeds of said refunding bonds, and to that end and to enable defendant bank to carry out the purpose of said trust, the city treasurer of Centralia from time to time deposited various sums of money with the defendant bank. The United States National Bank of Centralia accepted said trust, undertook to fulfill its obligation, and in the discharge of said trust, it issued to George B. Mason, as city treasurer of the City of Centralia, its deposit slips marked "Special Deposit" for the several sums left in its care for the purpose stated.

On the 21st day of September, 1914, there was an unexpended balance of \$2641.20 in said fund, which sum was delivered into the hands of the receiver first appointed and by him delivered to his successor, the present receiver C. A. Snowden, in whose possession the same still remains. Said money never became the property of the defendant bank, but always remained the property of your orator, held in trust by said bank and its receiver for the use and benefit of your orator.

XI.

Your orator further alleges that continuously from the date it received your orator's funds, as in this bill set forth, until it closed its doors on September 21, 1914, the [9] defendant bank had said

funds, and each of them, in its possession and control, and the same passed into the possession of the receiver first appointed, and by him were delivered to the present receiver, in whose possession and control said moneys still remain.

XII.

On September 21, 1914, the date on which the defendant bank passed into the hands of a receiver, it was indebted to the City of Centralia in the sum of \$1,000.00 in addition to the two sums of \$50,911.88 and \$2,641.20, held in trust, as in this bill set forth, so that your orator at the time said bank closed its doors had just and valid claims against said bank for the aggregate sum of \$54,553.08. Heretofore, to wit, on or about the 17th day of December, 1914, your orator duly presented to the defendant receiver its claim for the sums belonging to it, but said receiver has failed, neglected and refused to pay the same, or any part thereof, and has refused and does still refuse to recognize said sums of \$50,911.88 and \$2641.20, or either of said sums, or any part thereof, in the possession of the defendant bank at the time it failed, and now in the possession of the defendant C. A. Snowden, as receiver of said bank, as trust funds belonging to your orator.

XIII.

The surety bond given by the defendant bank to the City of Centralia to secure deposits to the amount of \$10,000.00, as alleged in paragraph IX of this bill, was written by the United States Fidelity & Guaranty Company of Baltimore, Maryland. Upon the failure of the defendant bank, said surety com-

pany paid to the City of Centralia the amount of such bond, and took an assignment of the claim of the city against the defendant bank for a like sum. Thereupon said surety company filed its claim with [10] the receiver of said bank for the amount of such claim assigned to it, and the receiver applied such assignment to the payment, first, of the special deposit of \$2641.20, then to the payment of the \$1000.00 deposit, and the balance of \$6358.80 to apply on the trust fund of \$50,911.88, so that there still remains in the hands of the defendant receiver the sum of \$44,553.08 belonging to your orator.

XIV.

Your orator further shows that on the 19th day of September, 1914, being the last day the bank was open for business, and on the 21st day of September, 1914, the day on which the bank failed to open for business, said bank was the owner and in the possession of certain improvement warrants and bonds theretofore issued by the City of Centralia, which warrants and bonds the City of Centralia was and is obliged to pay said warrants and bonds being as follows:

Local Improvement Fund:

Warrant No. 82 Issued to Allred & James in amount of\$1330.00

Warrant No. 89 Issued to Allred & James in amount of.... 6630.13

Total principal 7960.13

Interest on above warrants..... 185.06

Total due on warrants.....\$8145.19

Local Improvement District No. 7,

Bond No. 14, due September 1, 1914..... \$100.00

Local Improvement District No. 25,

Bonds No. 3 and 4 in amount of \$500, each..... 1000.00

Total.....\$9245.19

In addition to the bonds and warrants totaling \$9245.19, as shown above, your orator is informed and believes and therefore alleges the fact to be, that the said defendant bank at the time it closed its doors owned and held other warrants and bonds issued by the City of Centralia and payable by it, which said other warrants and bonds also passed into the possession [11] of the defendant C. A. Snowden, as receiver of said bank, in whose possession the same still remains. The amount of such other warrants and bonds is unknown to your orator and therefore cannot be definitely stated, but to the best of your orator's knowledge and belief, such other warrants and bonds amount to approximately \$1000.00.

XV.

There is not sufficient money, property or assets of said bank to pay its indebtedness in full, and your orator has no plain or adequate remedy at law, or any remedy whatever except that sought herein.

The defendant receiver is about to, and will, unless restrained from so doing, apply the funds in his hands belonging to your orator to the payment of the general indebtedness of said defendant bank, and thereby deprive your orator of its right to receive payment in full of its said claim. And your orator further shows that the defendant receiver has been instructed to declare and distribute, and he will, unless restrained from so doing, distribute a dividend of the moneys now in his hands among the general creditors of said bank ratably in proportion to the amount of their respective claims, and that the said

receiver, unless restrained by this Court from so doing, will make such distribution before your orator can give notice of an application for a preliminary or temporary injunction, whereby the funds in the hands of the receiver which should be rightfully applied in payment in full of your orator's claim, will be wrongfully paid and distributed, and by reason of which your orator will suffer immediate and irreparable loss and damage.

XVI.

This is a suit arising under the laws of the United States, and the amount involved herein exceeds the sum of [12] \$3000.00, exclusive of interest and costs.

Forasmuch as your orator can have no adequate relief except in this court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed for, make a full disclosure and discovery of all matters aforesaid, according to the best and utmost of their knowledge, remembrance, information and belief, full, true and direct answer make to the matters in this bill hereinbefore stated, but not under oath (an answer under oath being hereby expressly waived) your orator prays:

1. That a temporary restraining order be issued by this Court restraining the receiver, C. A. Snowden, his agents, servants and employees, from applying or distributing the funds in his hands, or any part of the same, to the general or any creditors of the defendant bank, until the application of your orator for a preliminary or provisional injunction can be heard

and determined by this court.

2. That upon the hearing of the application, a provisional or preliminary injunction be issued, restraining the said defendant C. A. Snowden, individually and as such receiver, his agents, servants and employees, from applying any of the funds of the said bank in his hands to the payment of the indebtedness of said bank, other than to the payment of the claim of your orator and that upon the final hearing and determination of this suit, said injunction be made perpetual, and it be decreed that the proceeds derived from the sale of the said 105 bonds, to wit, the sum of \$50,911.88, and the amount represented by the aforesaid deposits, to wit \$2641.20, were held in trust by said bank for the use and benefit of your orator, and that the balance of said funds—after deducting the \$10,000.00 assigned to the United States Fidelity & Guaranty Company of Baltimore, Maryland—be [13] decreed to be a trust fund held by the said receiver for the use and benefit of your orator, and that the receiver be required and directed to pay the same to your orator, and that he, his agents, servants and employees, be enjoined from applying any of the funds in his hands, or under his control, or in the possession of the Comptroller of the Currency, to the payment of the general indebtedness of said bank, or otherwise, until your orator shall be paid the full amount of said trust funds.

3. If it shall be found upon the final hearing that said trust funds, or any part of either of them, has been converted into securities or other property or assets of said bank, that your orator be decreed to

have a lien upon the same and upon all the money and assets of said bank for the repayment of said trust funds, and each of them, in full.

4. That the defendants be required to make full disclosure of the number and amount of all warrants and bonds issued by the City of Centralia owned by the defendant bank and in the possession of its receiver, with the amount of principal and interest claimed to be due thereon at the time of filing the defendants' answer, and if upon final hearing it should be held by the Court that your orator is not entitled to the relief hereinabove prayed for, that the amount of such warrants and bonds, with accrued interest thereon, be offset against the amount owing by the defendant bank to your orator.

5. That your orator may have such other, further and different relief as the equities of the case may require and to your Honors may seem meet, including the costs and disbursements in this suit.

May it please your Honors to grant unto your orator not only the injunctive relief prayed for in this bill, but also a writ of subpoena of the United States directed to the said [14] defendant The United States National Bank of Centralia, Washington, a banking association, and to C. A. Snowden, as receiver of such bank, commanding them, and each of them, on a day certain to appear and answer unto this bill of complaint and to obey and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of

16 *United States Nat. Bank of Centralia et al.*
equity and good conscience.

THE CITY OF CENTRALIA,
By W. N. BEAL and
PILES, HOWE & CAREY,
Its Solicitors.

SAMUEL H. PILES,
Of Counsel.

(Verified.)

(Filed Feb. 13, 1915.) [15]

**Answer of the United States National Bank and
Clinton A. Snowden, Receiver of the United
States National Bank of Centralia, Lewis
County, Washington, to the Amended Bill of
Complaint of the City of Centralia, a Municipal
Corporation.**

To the Honorable Judges of the District Court of
the United States for the Western District of
Washington, Southern Division, Sitting in
Equity:

Come now the above-named defendants and re-
spondents and for answer to the Amended Bill of
Complaint herein allege and say:

I.

As to paragraph or subdivision I of said Amended
Bill of Complaint these defendants and respondents
admit the allegations therein contained.

II.

As to paragraph or subdivision II of said Amended
Bill of Complaint these defendants and respondents
admit the allegations and statements therein con-
tained.

III.

As to paragraph or subdivision III thereof these defendants and respondents admit the allegations therein contained save and except as to the date when said Clinton A. Snowden became receiver of [16] said bank, and in this connection allege the fact to be that said Francis A. Chapman and not Francis R. Chapman resigned as such receiver upon the 14th day of November, 1914, and said Clinton A. Snowden was appointed as receiver and took possession of said assets and became such receiver on the 16th day of November, 1914.

IV.

As to paragraph or subdivision IV thereof these defendants and respondents admit the allegations therein contained.

V.

As to paragraph or subdivision V thereof these defendants and respondents admit that there were some bonds sold to the firm of Carstens & Earles, Incorporated, of Seattle, Washington, but as to what amount, what price, when delivery was to be made, these defendants and respondents have no knowledge and not sufficient information to form a belief. As to each and every other allegation contained in said paragraph, or subdivision of said Amended Bill of Complaint these defendants and respondents deny that they have any knowledge of the same and deny that they have sufficient information to form a correct belief of the same, therefore they deny each and every other allegation therein contained.

VI.

As to paragraph or subdivision VI thereof these defendants and respondents admit that on or about the date therein mentioned there was some bonds of the kind and character therein mentioned delivered to the defendant for the purpose of collecting and crediting the account of George B. Mason, Treasurer, with said bank, and further admit that at or about the time therein mentioned the National Bank of Commerce of Seattle was a correspondent and reserve bank in said City of Seattle of the defendants and respondents, United States National Bank of Centralia, and as to each and every other allegation therein contained these defendants and respondents deny that they have [17] any knowledge or sufficient information to form a belief, therefore they deny any such and every other allegation in said paragraph or subdivision contained. And further answering said paragraph or subdivision of the Amended Bill of Complaint allege the facts to be that the bonds that were delivered to defendant, United States National Bank of Centralia, Lewis County, Washington, were delivered for the purpose of collecting and crediting the account of George B. Mason, Treasurer, with said United States National Bank, and that such bonds were forwarded by said United States National Bank to the National Bank of Commerce of Seattle, and that the same were by said National Bank of Commerce delivered to said Carstens & Earles. Whether said National Bank of Commerce received the money for the same or credit these defendants and respondents do not know; but

in this connection allege the fact to be that the said National Bank of Commerce of Seattle did, on or about said time, give credit to said United States National Bank on its books of \$50,911.88.

VII.

As to paragraph or subdivision VII thereof these defendants and respondents deny that said United States National Bank of Centralia deposited the money therein alleged, or any part thereof, with itself, and deny that it ever had said money, or any part thereof, in its possession, or that it ever came into the possession of said United States National Bank of Centralia. Said defendants and respondents also deny that they have any knowledge or sufficient information to form a belief as to what said National Bank of Commerce of Seattle took from said Carstens & Earles for a credit or whether they actually received the money for said bonds therein referred to. They admit the said National Bank of Commerce of Seattle on or about said date did credit said United States National Bank of Centralia, Lewis County, Washington, upon its said National Bank of Commerce—books with the sum of \$50,911.88, and that in turn the said United States National Bank of Centralia gave [18] credit to said George B. Mason on its books with said sum of \$50,911.88 as Treasurer of the City of Centralia. They deny each and every other allegation therein contained.

VIII.

As to paragraph or subdivison VIII of said Amended Bill of Complaint these defendants and respondents deny each and every allegation therein contained.

IX.

As to paragraph or subdivision IX of said Amended Bill of Complaint these defendants and respondents admit that said United States National Bank has been designated as a depository for said City of Centralia, and that the said United States National Bank had given said City of Centralia an indemnifying bond to the extent of \$10,000 for the purpose of securing deposits made with said bank by said City of Centralia through its treasurer. These defendants and respondents deny each and every other allegation therein contained.

And further answering said paragraph or subdivision of the Amended Bill of Complaint said defendants and respondents allege the fact to be that said United States National Bank had paid two per cent interest on all daily balances of said city with said bank at all times prior to the closing of said bank on the 21st day of September, 1914, and that said City of Centralia received and accepted the same and ratified the acts of said city treasurer in receiving the same and used the monies received as such interest in the expenses of its municipal affairs, and that said complainant received said two per cent interest upon said sum of \$50,911.88 referred to in said Amended Bill of Complaint and for which this action was brought to recover, which was accepted and received by said city through its duly constituted authorities ratifying and confirming the act of said city treasurer taking credit for said amount with said United States National Bank of Centralia. And that said sum, and each and every part thereof, from and

after said [19] city treasurer took said credit and said city through its said treasurer received its interest on said credit, became and was the property of said United States National Bank of Centralia, and said complainant or said city a mere creditor of said bank from said time on.

X.

As to paragraph or subdivision X of said Amended Bill of Complaint these defendants and respondents admit that the Portland Trust & Savings Bank of Portland, Oregon, became the purchaser of refunding bonds issued by the City of Centralia to take up outstanding indebtedness, evidenced by warrants, for current expenses prior to the time of issuance of said bonds. And said defendants and respondents deny each and every other allegation in said paragraph or subdivision contained.

Further answering said paragraph or subdivision of the Amended Bill of Complaint these defendants and respondents allege the fact to be that the \$2641.20 referred to and mentioned was a credit only in said bank in behalf of the treasurer of said City of Centralia arising from interest and premium on said bonds so sold to said Portland Trust & Savings Bank; and prior to the commencement of this action and on or about the month of December, 1914, the said credit the said City of Centralia had with the said United States National Bank was paid and discharged, and said city treasurer of the City of Centralia and said City of Centralia received during said month of December the sum of \$10,000, being on account of the surety bond securing the deposits of

the City of Centralia in said United States National Bank from the United States Fidelity & Guaranty Company, which, to the extent of said amount of \$2641.20 was used to pay and discharge said credit; and that there is not now and was not at the commencement of this action and the filing of the original Bill of Complaint herein and the Amended Bill of Complaint herein, any such sum or any other sum due from the United States National Bank of Centralia or its receiver to said City of Centralia on account of interest and premium on said bonds so sold to said Portland Trust & Savings Bank. '[20]

XI.

As to paragraph or subdivision XI of said Amended Bill of Complaint these defendants and respondents deny each and every allegation therein contained.

XII.

As to paragraph or subdivision XII of said Amended Bill of Complaint these defendants and respondents admit that on the 21st day of September, 1914, the said City of Centralia, through its treasurer, George B. Mason, had a credit with said United States National Bank for the sum of \$1,000 in addition to the alleged claims of said City for \$50,911.88 and \$2641.20, and admit that on or about the 17th day of December, 1914, the said City of Centralia presented a claim to said defendant, Clinton A. Snowden, as such receiver, claiming a preference claim and that it be paid to the exclusion of all other creditors, a claim for something like \$54553.08, and that the said defendants and respondents refused to

pay the sum of said preference claim to the exclusion of other creditors of said bank.

These defendants and respondents deny each and every other allegation in said paragraph or subdivision contained.

XIII.

As to paragraph or subdivision XIII of said Amended Bill of Complaint these defendants and respondents admit that on or before the commencement of this action, to wit, during the month of December, 1914, the United States Fidelity & Guaranty Company of Baltimore, Maryland, paid to said city treasurer of said City of Centralia the sum of \$10,000 and that the \$2641.20 received as such interest and premium hereinbefore set forth was paid and discharged, and that the balance of said \$10,000 was applied upon the deposit of \$50,911.88. These defendants and respondents deny each and every other allegation in said paragraph or subdivision contained, saving and except that said city did assign to said surety company the claim against said United States National Bank, or part of claim, in the said sum of [21] \$10,000, which arose on account of said payment by said surety company.

XIV.

As to paragraph or subdivision XV of said Amended Bill of Complaint these defendants and respondents deny that they have any knowledge or sufficient information to form a belief as to whether or not said bank has sufficient money, property or assets to pay its indebtedness in full.

Further answering said paragraph or subdivi-

sion of said Amended Bill of Complaint these defendants and respondents admit that, unless restrained by the order of this Honorable Court, they will pay a ten per cent dividend upon the allowed claims at the present time under the orders and directions of the Comptroller of the Currency of the United States, which said claims now aggregate the sum of \$817,123.42, and which said dividend of ten per cent would be ratably distributed under the laws and statutes of the United States and in proportion and ratably to the amount of said respective claims so approved. And these defendants and respondents deny each and every other allegation in said paragraph or subdivision of said Amended Bill of Complaint therein contained.

XV.

As to paragraph or subdivision XVI of said Amended Bill of Complaint these defendants and respondents deny that this is a suit arising under the laws of the United States and they deny that this Honorable Court has jurisdiction of the subject matter of this action.

AND NOW FOR ANOTHER AND FURTHER ANSWER AND BY WAY OF AFFIRMATIVE DEFENSE TO SAID AMENDED BILL OF COMPLAINT OF SAID ORATOR THESE DEFENDANTS AND RESPONDENTS ALLEGE:

I.

That on or about the 11th, 12th, 13th and 14th days of July, 1914, and at no other time thereafter did the proceeds of the sale [22] of bonds of the City of Centralia for the purpose of purchasing a

water system, or for any other purpose, ever come into the physical possession or control of said defendant bank, United States National Bank of Centralia, Lewis County, Washington, or into the hands of Francis A. Chapman, receiver of said bank, or the said defendant and respondent, Clinton A. Snowden, receiver of said respondent United States National Bank of Centralia. That the only connection, directly or indirectly, that said United States National Bank of Centralia, Lewis County, Washington, ever had with the proceeds of the sale of any such bonds was to receive a credit with the National Bank of Commerce of the City of Seattle for the sum of \$50,-911.88, which said credit prior to the 28th day of July, 1914, had been exhausted with other and greater credits with said bank in payment of the debts of said United States National Bank to various and sundry creditors throughout the United States; and said defendants and respondents further allege that no moneys, either directly or indirectly, ever came into the physical possession or under the physical control of said United States National Bank of Centralia, arising from said source.

II.

Said defendants and respondents further allege and show unto this Honorable Court, that on the 21st day of September, 1914, the day upon which the Comptroller of the Currency of the United States appointed Francis A. Chapman, receiver of said United States National Bank, there was at said time in cash and in cash items the sum of \$29,628.10, of which said sum there was in actual lawful money

of the United States the sum of \$27,232.60, and that each and every dollar of said moneys and all of said cash items came into said United States National Bank from certain and definite and specific depositors depositing moneys and credits with said bank on the 19th day of September, 1914, and prior to said date for the period of three months, and that no part of the proceeds of the sale of said bonds in said Amended Bill of [23] Complaint mentioned, and not one dollar of the said proceeds and no sum whatever in any amount whatever of said cash items or said moneys in the hands of said bank on the said 21st day of September, 1914, ever came from the said City of Centralia, its treasurer or anyone representing said City of Centralia, or for and on behalf of said City of Centralia, but solely from the source herein alleged, from certain, definite and specific individual depositors during said period of said three months past prior to the 21st day of September, 1914.

WHEREFORE, inasmuch as your said defendants and respondents have fully answered herein and made disclosures as to the facts and circumstances surrounding the transactions had and done between the parties herein, your defendants and respondents pray that said complainant, the City of Centralia, take nothing by its said Amended Bill of Complaint; that the same may be dismissed and that these defendants and respondents may have judgment against said complainant, the City of Centralia, for its costs and disbursements in this action; and that the temporary injunction and restraining

order heretofore granted be dissolved, set aside and held for naught, that the said defendant and respondent, Clinton A. Snowden, receiver of said United States National Bank, may be permitted, without interference, to proceed to pay and distribute the dividend to the creditors of said United States National Bank heretofore ordered and directed to be paid by said Comptroller of the Currency and distribute the assets in accordance with the laws of the United States in such cases made and provided.

THE UNITED STATES NATIONAL BANK
OF CENTRALIA, WASHINGTON, and
CLINTON A. SNOWDEN,
Receiver of Said United States National Bank.

By A. R. TITLOW,
Their Attorney.

(Verified.)

(Filed Feb. 15, 1915.) [24]

**Stipulation for Substitution of Parties Defendant
and Solicitors for Defendants.**

It appearing that C. A. Snowden has resigned from the receivership of the United States National Bank of Centralia, and that A. R. Titlow, formerly solicitor for the receiver, has been duly appointed by the Comptroller of the Currency receiver of the United States National Bank of Centralia, it is stipulated between the parties hereto that A. R. Titlow, as receiver of the United States National Bank of Centralia, be and he is hereby substituted as a party defendant in this cause in the place and stead

28 *United States Nat. Bank of Centralia et al.*

of C. A. Snowden, and that Bausman, Oldham & Goodale are substituted for A. R. Titlow as the solicitors for the receiver and for the bank.

Dated this 3d day of March, 1915.

W. N. BEAL and

PILES, HOWE & CAREY,

Solicitors for Complainant.

BAUSMAN, OLDHAM & GOODALE,

Solicitors for the Receiver and for the United States National Bank.

It is so ordered.

Done in open court this 18 day of May, 1915.

JEREMIAH NETERER,

Judge.

(Filed May 20, 1915.) [25]

Decree.

This cause came on to be heard on the pleadings and proof on the 6th day of July, 1915, and was argued by counsel and thereupon upon consideration thereof, it is found, ordered, adjudged and decreed, as follows, to wit:

I. Complainant at all times mentioned in the Bill of Complaint herein, was and it now is, a municipal corporation, with a population not exceeding fifteen thousand (15,000), organized and existing under the laws of the State of Washington, located in the county of Lewis, in the Southern Division of the Western District of Washington, and operating under a commission form of Government, as provided by Chapter 116 of the Laws of 1911 of the

State of Washington.

II. At all times mentioned in the Bill of Complaint herein, the United States National Bank of Centralia, Washington, was and it still is, a National Banking Association, duly organized and existing under the National Banking Act of the United States of America, located and having its principal and only place of business in the City of Centralia, county of Lewis, in the Southern division of the Western District of Washington.

III. On or about the 21st day of September, 1914, the United States National Bank of Centralia, Washington, was insolvent, and Francis R. Chapman was duly appointed receiver of said bank by the Comptroller of the Currency, to close its affairs as provided by law. Said receiver having duly qualified, took possession and control of said bank and continued to act in such capacity until on or about the 17th day of November, 1914, when he was succeeded as such receiver by C. A. Snowden, who continued to act in such capacity until on or about the 1st day of March, 1915, when said Snowden was succeeded as such receiver by A. R. Titlow, who has been duly substituted in this action as defendant in lieu [26] of the said C. A. Snowden, and who now as the duly qualified and acting receiver of the defendant bank, is in control of all its moneys, property and assets. The defendant bank, ever since the 21st day of September, 1914, has been and it is still, insolvent.

IV. At all times mentioned in the Bill of Complaint herein, the National Bank of Commerce of

Seattle, Washington, was a national banking association, located and doing business at Seattle, Washington, and was the regular correspondent and reserve bank at Seattle, Washington, of the United States National Bank of Centralia.

V. Prior to July 1st, 1914, the City of Centralia, pursuant to a vote of its electors, provided for the issuance and sale of certain water or utility bonds of the par value of three hundred thousand dollars (\$300,000.00), for the purpose of purchasing a privately owned water system then operated in said city, and converting the same from a pumping to a gravity system and otherwise improving said system of waterworks for the use and benefit of said city and its inhabitants. Said issue of bonds was sold to Carstens & Earles, Inc., of Seattle, Washington, to be delivered by said city to the purchaser from time to time as funds were needed to carry on the work for which said bonds were issued and sold.

VI. On or about the 11th day of July, 1914, the City of Centralia, by and through its duly elected, qualified and acting treasurer, delivered one hundred five (105) of said water bonds of the par value of fifty-two thousand five hundred dollars (\$52,500.00), (the same being the balance of said total issue of three hundred thousand dollars (\$300,000.00) par value) to the defendant bank for the purpose of having it collect the amount due from Carsten & Earles, Inc., pursuant to the terms of said sale, and thereupon said city treasurer drew a draft on Carsten & Earles, Inc., for the amount due, with directions to the defendant bank to deliver the bonds to

Carsten & Earles, Inc., upon the payment of the [27] amount of the draft and accrued interest on the bonds to the date of delivery and the defendant bank, on or about the 12th day of July, 1914, transmitted the bonds and draft to Carsten & Earles, Inc., at Seattle, Washington, through the medium of its then regular correspondent and reserve bank at Seattle, the National Bank of Commerce of Seattle, Washington, which last-named bank delivered the bonds to and collected the sum of fifty thousand nine hundred eleven and 88/100 dollars (\$50,911.88) from Carsten & Earles, Inc., on or about July 13th, 1914, said sum being the amount due on said bonds from Carsten & Earles, Inc., to the City of Centralia.

VII. The National Bank of Commerce of Seattle, Washington, after it delivered said bonds and collected the purchase price thereof in the manner hereinbefore stated, credited the United States National Bank of Centralia, Washington, with the sum of fifty thousand nine hundred eleven and 88/100 dollars (\$50,911.88) and so advised said bank, and thereupon the United States National Bank of Centralia, charged said sum of fifty thousand nine hundred eleven and 88/100 dollars (\$50,911.88) to the National Bank of Commerce of Seattle, Washington, and deposited said sum with itself to the credit of the city treasurer of the City of Centralia.

VIII. On the 11th day of July, 1914, the account of the United States National Bank of Centralia, Washington, with the National Bank of Commerce of Seattle, was overdrawn to the amount of eleven

thousand seventy-one and 64/100 dollars (\$11,071.64), which overdraft continued until the 13th day of July, 1914, on which day deposits to the amount of fifty-five thousand sixty-nine and 77/100 dollars (\$55,069.77) were credited by the National Bank of Commerce of Seattle to the United States National Bank of Centralia, Washington, said credits including the sum of fifty thousand nine hundred eleven and 88/100 dollars (\$50,911.88), which on that day had been collected by the National Bank of Commerce of Seattle, from Carsten & Earles, Inc. The National Bank of Commerce of Seattle, [28] Washington, in the usual and ordinary course of business, applied the said deposits of fifty-five thousand sixty-nine and 77/100 dollars (\$55,069.77) so far as necessary to discharge the overdraft of the United States National Bank of Centralia, so that at the close of business on the 13th day of July, 1914, there remained in the National Bank of Commerce at Seattle, Washington, the sum of forty-four thousand nine hundred ninety-eight and 13/100 dollars (\$44,998.13), to the credit of the United States National Bank of Centralia, Washington. In the ordinary course of business thereafter, said balance of forty-four thousand nine hundred ninety-eight and 13/100 dollars (\$44,998.13) was drawn upon by the United States National Bank of Centralia, Washington, in carrying on its banking operations. At all times from and including the 13th day of July, 1914, until and including the 21st day of September, 1914, there was continuously on hand in the vaults of the United States National Bank of Centralia, and in

the vaults of its reserve agents, cash in excess of the sum of sixty-nine thousand dollars (\$69,000.00).

IX. At the time the United States National Bank of Centralia, Washington, received said one hundred five (105) bonds, it and its officers knew the purpose for which they had been issued and at the time the defendant bank collected the proceeds from the sale of said bonds and deposited same with itself, it knew that the sum so collected and deposited was, in fact, the proceeds of the sale of said bonds and that the moneys so collected and deposited were trust funds which the treasurer of the City of Centralia could hold only as a public officer and that said money could not lawfully be used for any purpose other than the purchase and improvement of said system of waterworks.

X. On or about the 6th day of February, 1912, the United States National Bank of Centralia, was designated as depository for the safekeeping of the public moneys of the city of Centralia to the extent of ten thousand dollars (\$10,000.00), such designation to be effective upon the defendant bank, complying with the laws of the State of Washington respecting municipal deposits. [29] Thereafter in the year 1912 the defendant bank filed with the city clerk of the City of Centralia, a surety bond in the maximum amount of deposits designated by the city treasurer, to be carried in the defendant bank, to wit, the sum of ten thousand dollars (\$10,000.00). The defendant bank never furnished any other bond or any other security as provided by law to secure the repayment of public moneys deposited with it,

nor did it at any time file with the City of Centralia, or with its clerk, or with any other officer thereof, or at all, any contract as provided by law whereby it agreed to pay interest on daily or other balances of municipal funds left with it as a city depository. The deposit of said sum of fifty thousand nine hundred eleven and 88/100 dollars (\$50,911.88) by the defendant bank with itself and to the credit of the city treasurer of the City of Centralia, as hereinbefore stated, was without authority of law and in violation of the statutes of the State of Washington, relative to the depositing of public moneys of cities of the State of Washington, and by reason thereof and of the facts hereinbefore found, the title to the money so deposited by the defendant bank with itself and credited to the city treasurer of the City of Centralia, did not pass to the defendant bank, but same always remained the property of the City of Centralia, held in trust by the said bank for the use and benefit of the said city.

XI. On the 21st day of September, 1914, the day on which the defendant bank closed, there was on deposit in said bank to the credit of the City of Centralia, two other sums of money: One a special deposit, amounting to two thousand six hundred forty one and 20/100 dollars (\$2,641.20), and another deposit amounting to one thousand dollars (\$1,000.00), so that at the time the said bank closed its doors, the City of Centralia had just and valid claims against said bank for the aggregate sum of fifty-four thousand five hundred fifty-three and 08/100 dollars (\$54,553.08).

XII. The surety bond given by the defendant bank to the City of Centralia to secure deposits to the amount of ten thousand dollars (\$10,000.00) was written by the United States Fidelity & Guaranty Co., of Baltimore, Maryland. Upon the failure of the defendant bank the said surety company paid to the City of Centralia, [30] the amount of such bond and took an assignment of the claim of the city against the defendant bank for a like sum, and thereupon said surety company filed its claim with the receiver of said bank for the amount of said claim assigned to it and the receiver applied said assignment to the payment of the complainant's aggregate claim as follows: First, on the special deposit of two thousand six hundred forty-one and 20/100 dollars (\$2,641.20); then on the payment of the one thousand dollar (\$1,000.00) deposit, and the balance of six thousand three hundred fifty-eight and 80/100 dollars (\$6,358.80) was applied in partial payment on the trust fund of fifty thousand nine hundred eleven and 88/100 dollars (\$50,911.88), leaving forty-four thousand five hundred fifty-three and 08/100 dollars (\$44,553.08) for which the City of Centralia has not been reimbursed either by said surety company, or by the defendant bank, or by its receiver and there passed into the hands of the receiver of the United States National Bank of Centralia, cash in excess of said sum of forty-four thousand five hundred fifty-three and 08/100 dollars (\$44,553.08).

XIII. The Court finds, adjudges and decrees that by reason of the premises the proceeds of the sale of

said one hundred five (105) water bonds (\$50,911.88) were trust funds and title to so much thereof as was not secured as provided by law never passed to the defendant bank, that the proceeds of said sale of bonds to the amount of forty-four thousand nine hundred thirty-eight and 13/100 dollars (\$44,938.13) have been traced into the hands of the defendant bank and its receivers; that the complainant is therefore a preferred creditor for the amount due after the payment to it by said surety company of the said sum of ten thousand dollars (\$10,000.00), that is to say, the complainant is a preferred creditor for the amount of forty-four thousand five hundred fifty-three and 09/100 dollars (\$44,553.09), and it is ordered, adjudged and decreed that A. R. Titlow as receiver of the United [31] States National Bank of Centralia recognize the complainant as such preferred creditor and forthwith pay over to it the amount of its claim in full or certify the same to the Comptroller of the Currency for payment in full and it is further ordered, adjudged and decreed that said receiver be and he is hereby perpetually enjoined from disbursing said sum of forty-four thousand five hundred fifty-three and 08/100 dollars (\$44,553.08) among the general creditors of the defendant bank.

XIV. It is further adjudged and decreed that complainant recover its costs which are taxed in the sum of one hundred twenty-seven and 15/100 dollars. To the foregoing and each and every part thereof the defendants except and their exceptions are hereby allowed.

Done in open court this 23d day of August, 1915.

EDWARD E. CUSHMAN,

Judge.

(Filed Aug. 23, 1915). [32]

Defendants' Exceptions (to Decree).

The defendants severally specifically except to the foregoing decree in the following respects:

1. To the finding contained in paragraph 7 that the United States National Bank of Centralia deposited the sum of \$50911.88 with itself to the credit of the city treasurer of the City of Centralia, on the ground that the evidence shows that no sum of money was actually deposited with the *United Bank* to the credit of the city treasurer.

2. To the finding contained in paragraph 8 that there was continuously from July 13, 1914, to September 21, 1914, on hand in the vaults of the United States National Bank of Centralia and in the vaults of its reserve agents cash in excess of \$69,000.00, on the ground that any sums held by reserve agents were merely debts owing the United States National Bank, and not cash belonging to that bank.

3. To the finding contained in paragraph 9 that the defendant bank collected the proceeds from the sale of said bonds and deposited such proceeds with itself, on the ground that the evidence shows that no such proceeds were collected by the defendant bank or deposited with itself.

4. To the finding or conclusion contained in paragraph 10 to the effect that the defendant bank held

in trust for the City of Centralia any sum of money whatever, on the ground that the evidence shows that the sum of money therein mentioned was never received by the defendant bank.

5. To the finding contained in paragraph 12 that there passed into the hands of the receiver of the United States National Bank cash in excess of the sum of \$44,553.08, on the [33] ground that the evidence shows that cash to the extent of only about \$27,000.00 passed into the hands of the receiver.

6. To the finding or conclusion contained in paragraph 13, to the effect that the proceeds of the sale of the water bonds were trust funds, and that the proceeds of such bonds to the amount of \$44,938.13, or any other amount, have been traced into the hands of the defendant bank and its receivers, on the ground that these findings or conclusions are contrary to the evidence; to the conclusion contained in paragraph 13 that the complainant is a preferred creditor for the amount of \$44,553.09, or any other sum, on the ground that the proper conclusion from the evidence is that the complainant is an ordinary creditor for that amount; to that part of the decree which orders A. R. Titlow as receiver of the United States National Bank of Centralia to recognize the claimant as such preferred creditor and to pay to it the amount of its claim or to certify the same to the Comptroller of the Currency for payment in full; to that part of the decree which enjoins the receiver from disbursing said sum of \$44,553.09 among the general creditors of the defendant bank; to the decree generally in so far as it adjudges the complainant to be a preferred creditor for any sum

whatever, on the ground that the evidence shows the complainant to be entitled to a general claim only against the defendants.

7. To the decree in so far as it adjudges complainant entitled to recover any costs other than clerk's costs, on the ground that all such other costs have been waived.

The foregoing exceptions were duly taken by the defendants severally at the time of the signing of the foregoing decree, and are hereby allowed *nunc pro tunc* as of August 23, 1915.

Dated August 27th, 1915.

EDWARD E. CUSHMAN,

Judge.

(Filed Aug. 27, 1915.) [34]

Statement of Testimony.

Testimony of J. W. Daubney, for Plaintiff.

J. W. DAUBNEY, a witness for the plaintiff, testified at a preliminary hearing and admitted herein as follows: That he was the cashier of the United States National Bank from its organization in 1907 until it closed in 1914; that Mr. Mason, the treasurer of the City of Centralia, left with the bank some waterwork bonds for collection. He made a sight draft on Carstens & Earles of Seattle who were the purchasers of the bonds. The bank sent the bonds, together with the sight draft, to the National Bank of Commerce of Seattle for collection, with instructions to deliver the bonds upon payment of the draft to credit the United States National's account with its proceeds and to advise it of the credit. Upon receipt of this advice, the United States National

(Testimony of J. W. Daubney.)

charged the Seattle bank with the amount and credited a like amount to the city treasurer of Centralia. The collection was sent on July 10th, 1914 and was collected and credited by the Seattle bank on July 13th. The amount was \$55,911.88. As soon as the United States National was advised of this credit, it, in turn, credited the city treasurer with a like amount; that the United States National knew that these were water utility bonds of that city, and that they had been issued for the purpose of purchasing the waterworks and converting it from a pumping system to a gravity system, and that they were issued by virtue of a city ordinance.

(Thereupon plaintiff introduced in evidence exhibit 1, which was an ordinance of the City of Centralia relating to the issuance of these bonds. In substance, it provided that these bonds should be drawn solely for the purpose of paying the cost and expense of acquiring, constructing, owning and maintaining a water system, and any surplus from the sale of the bonds should be applied [35] to the payment of the principal and interest on the bonds themselves.

Section 12 of which said ordinance reads as follows:

“Section 12. The money derived from the sale of any of the bonds herein authorized, shall be paid into the said Centralia Water System Fund, as heretofore provided, and shall be drawn upon solely for the purpose of paying the costs and expenses of acquiring, constructing, owning and maintaining such water system, and all the costs and expenses connected therewith, and the surplus of the money, if

(Testimony of J. W. Daubney.)

any, from the sale of said bonds over and above the total costs of said waterworks system shall be applied to the payment of said bonds and interest thereon as the same mature."

(Plaintiff's Exhibit No. 2, filed July 6, 1915.)

(This ordinance was introduced as Exhibit No. 1 on the preliminary hearing, and as Exhibit No. 2 on the final hearing.)

The witness, continuing, testified that at the close of business on July 13, 1914, there was actual cash in the vaults of the United States National of \$61,439.82; on the 14th, \$56,051.11; on the 15th, \$43,692.48; on the 16th, \$39,215.77; on the 17th, \$40,102.06; on the 18th, \$39,373.00; that the above sums included actual cash in the vaults of the bank and cash items. Cash items was not the same as cash. The total of cash and cash items on the respective dates thereafter were as follows: July 18, 39,373.31; July 20, 38,318.22; July 21, 52,753.37; July 22, 48,572.77; July 23, 49,749.07; July 24, 47,044.26; July 25, 48,230.03; July 27, 53,193.31; July 28, 54,409.25; July 29, 54,868.35; July 30, 62,856.47; July 31, 55,120.78; August 1, 52,897.11; August 3, 53,676.07; August 4, [36] 52,488.89; August 5, 57,026.65; August 6, 54,394.84; August 7, 60,942.33; August 8, 49,805.07; August 10, 33,805.63; August 11, 42,103.36; August 12, 41,101.94; August 13, 41,177.22; August 14, 48,392.15; August 15, 43,623.74; August 17, 65,309.55; August 18, 72,007.07; August 19, 71,201.48; August 20, 70,072.32; August 21, 70,021.49; August 22, 68,981.04; August 24, 63,182.64; August 25, 61,152.63; August 26, 63,191.11; August 27, 63,484.19; August 28, 64,255.24; August 29, 66,120.40; August 31, 74,524.60; September 1, 74,295.94; September 2,

(Testimony of J. W. Daubney.)

62,389.12; September 3, 72,992.88; September 4, 77,136.08; September 5, 96,071.42; September 8, 89,695.34; September 9, 84,572.75; September 10, 82,537.85; September 11, 47,881.75; September 12, 38,277.66; September 14, 61,528.79; September 15, 42,211.41; September 16, 31,439.28; September 17, 23,527.86; September [37] 18, 31,983.86; September 19, 32,439.44.

There was turned over to the receiver upon insolvency, in cash, \$27,232.60. The bank had never given the City of Centralia any other than the depository bond for \$10,000.00.

Upon cross-examination, the witness testified that no part of the proceeds from the sale of these bonds to Carstens & Earles came to the United States National Bank, in money; that the sale was represented by a credit given the United States National Bank in the National Bank of Commerce at Seattle; that on July 28th, 1914, the account of the United States National Bank with the National Bank of Commerce of Seattle was overdrawn to the extent of \$1,038.64; was again overdrawn on August 4th, \$2,593.94; on August 12th, \$2,442.91; on August 12, \$7,785.98.

On redirect examination, the witness testified that this credit of 50,911 remained with the Seattle bank to the credit of the United States National, and was drawn on in the regular course of business; that if a draft were bought for a thousand dollars, this account might have been drawn on by the United States National giving a draft on the National Bank of Commerce; that between July 12th and 22d, the United States National drew out of the National

(Testimony of J. W. Daubney.)

Bank of Commerce, \$92,341.09, for which it received money, or the equivalent.

In addition to the proceeds from the sale of the water bonds, there was also an item of \$2,641.20 standing to the credit of "G. B. Mason, special account," on the books [38] of the bank. The witness testified that he was not familiar with this account but that his recollection was that it was a balance remaining on hand in the special account for the redemption of warrants.

On recross-examination, the witness testified that the \$10,000.00 transfer of the credit from the National Bank of Commerce to a Chicago bank, whereby the United States National had issued a draft for \$10,000.00, did not create one dollar in the United States National; that it was simply a transfer of credit. This was on July 14th. The witness could not state a single instance where a draft had been purchased on the National Bank of Commerce by a deposit of money with the United States National. Some paid cash and some gave checks when drafts were purchased.

On redirect examination, the witness testified that between July 12th and July 22d, 1914, the \$92,341.09 credit with the National Bank of Commerce was utilized by the United States National either by paying its debts or receiving credit somewhere; that if a man wanted a thousand dollar draft, he would draw his own private check for a thousand dollars and the United States National would give him a draft on the Seattle account, thus reducing the United States National's indebtedness to the amount of one thousand dollars, so that in each and every one of these transactions, the United States National

(Testimony of J. W. Daubney.)

either reduced its indebtedness and obligations to someone else or made deposits with some other bank, or took in lieu actual cash or securities. The witness could not tell how the \$10,000.00 draft of July 14th arose. It might have been a telegraphic transfer; it might [39] have been by letter, or it might have been by draft. Subsequently, when his attention was called to a draft book, he stated that it was a telegraphic transfer.

Testimony of Ernest G. Shorrock, for Plaintiff.

ERNEST G. SHORROCK, a witness for the plaintiff, testified as follows: That he was a certified public accountant and had been such for twelve years; that he had made an examination of the books of the defendant bank between and including July 13th, 1914, and September 19th, 1914. Between and including those dates, the lowest sum in cash on hand in the bank was \$23,527.86, on September 17th, 1914. The lowest sum in reserve banks at any time between and including those dates was \$39,726.39 on August 10th. The lowest amount in the reserve banks and the Centralia bank on any one day between and including those dates was \$69,141.80 on September 17th, 1914. The witness testified that the reserve banks of the United States National between and including July 13th and September 19th, 1914, were as follows: Chase National Bank, New York; National Bank of Tacoma; First National Bank of Portland; National Bank of Commerce, Seattle; Bank of California, Tacoma; Continental & Commercial National Bank, Chicago; First National Bank, San Francisco; Northwestern National Bank, Minneapolis; Seattle National Bank; Northwestern

National Bank, Portland, and Merchants National Bank, Portland.

Plaintiff then introduced in evidence a statement prepared by witness. The first column showed the dates; the next column, the cash on hand, and the next, the amount due from reserve agents. The final column, the total cash on hand and due from reserve agents. This statement was offered [40] in evidence as Plaintiff's Exhibit Number 1, and is as follows:

Plaintiff's Exhibit No. 1—Schedule.

**UNITED STATES NATIONAL BANK OF
CENTRALIA.**

**SCHEDULE OF (1) CASH ON HAND; (2) DUE
FROM RESERVE AGENTS; AND (3) TO-
TAL CASH ON HAND AND DUE FROM
RESERVE AGENTS (AS PER TRIAL BAL-
ANCE BOOK).**

1914.

Date.	Cash on Hand.	Due From Reserve Agents.	Total Cash on Hand and Due From Reserve Agents.
July 13	61,439.82	88,971.55	150,411.37
14	56,051.11	82,964.31	139,015.42
15	43,692.48	69,056.56	112,749.04
16	39,215.77	97,967.27	137,183.04
17	40,102.06	96,582.78	136,684.84
18	39,373.31	99,745.42	139,118.73
20	38,318.22	94,844.71	133,162.93
21	52,753.37	71,304.73	124,058.10
22	48,572.77	70,520.64	119,093.41
23	49,749.07	88,294.91	138,043.98
24	47,044.26	79,915.93	126,960.19

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Date.	Cash on Hand.	Due From Reserve Agents.	Total Cash on Hand and Due From Reserve Agents.
25	48,230.03	104,245.33	152,475.36
27	53,193.31	94,709.56	147,902.87
28	54,409.25	46,082.48	100,491.73
29	54,868.35	41,199.88	96,068.23
30	62,856.47	33,709.60	96,566.07
31	55,120.78	26,426.74	81,547.52
Aug. 1	52,897.11	52,446.79	105,343.90
3	53,676.07	35,493.33	89,169.40
4	52,488.89	28,387.56	80,876.45
5	57,026.65	22,802.74	79,829.39
6	54,394.84	27,346.48	81,741.32
7	60,942.33	39,914.66	100,856.99
8	49,805.07	50,011.62	99,816.69
10	33,805.63	39,726.39	73,532.02
11	42,103.36	46,907.32	89,010.68
12	41,101.94	64,157.21	105,259.15
13	41,177.22	104,845.38	146,022.60
14	48,392.15	99,144.19	147,536.34
15	43,623.74	99,641.98	143,265.72
17	65,309.55	109,749.51	175,059.06
18	72,007.07	87,264.41	159,271.48
19	71,201.48	70,989.16	142,190.64
20	70,072.32	75,349.47	145,421.79
21	70,021.49	87,840.82	157,862.31
22	68,981.04	73,587.03	142,568.07
24	63,182.64	102,267.33	165,449.97
25	61,152.63	93,298.06	154,450.69
26	63,191.11	96,694.00	159,885.11
27	63,484.19	90,453.29	153,937.48
28	64,255.24	88,013.81	152,269.05
29	66,120.40	89,096.21	155,216.61

[41]

Exhibit 1 Continued.

(Testimony of Ernest G. Shorrock.)

Date.	Cash on Hand.	Due From Reserve Agents.	Total Cash on Hand and Due From Reserve Agents.
Aug. 31	74,524.60	72,576.26	147,100.86
Sept. 1	74,295.94	61,487.22	135,783.16
2	62,389.12	79,908.15	142,297.27
3	82,992.88	65,826.90	148,819.78
4	77,136.08	65,030.33	142,166.41
5	96,071.92	79,045.54	175,117.46
8	89,695.34	75,804.94	165,500.28
9	84,572.75	68,075.17	152,647.92
10	82,537.85	63,970.37	146,508.22
11	47,881.75	64,639.57	112,521.32
12	38,277.66	69,792.00	108,069.66
14	61,538.79	55,340.97	116,879.76
15	47,211.41	65,429.64	112,641.05
16	31,439.28	40,532.70	71,971.98
17	23,527.86	45,613.94	69,141.80
18	31,983.86	43,174.42	75,158.28
19	32,439.44	46,052.32	78,491.76

(Plaintiff's Exhibit No. 1, filed July 6, 1915.)

[42]

The witness, continuing, corrected a previous statement as follows: That the lowest amount in reserve banks was on August 5th, of \$22,802.74 instead of \$39,000.00. That does not change the result of the \$69,000 to any extent in the defendant bank and the reserve banks.

The witness on redirect examination testified that he had found from an examination of the bank's books that the earnings of the bank between and including July 13th and September 19th, 1914, exceeded the expenses and losses in the sum of \$880.58.

(Thereupon plaintiff introduced in evidence an

(Testimony of Ernest G. Shorrock.)

ordinance of the City of Centralia under which the bonds that were delivered to the United States National were authorized. This was received as Plaintiff's Exhibit Number 2, but has already been referred to in the testimony of J. W. Daubney as exhibit number 1. This confusion of exhibits arose by reason of the fact that the Daubney testimony was given at a preliminary hearing of this action, and by stipulation between the parties, was utilized on final hearing.)

Plaintiff then read in evidence the testimony of George B. Mason which had been given upon the preliminary hearing on behalf of the defendant, which in substance, was as follows: He had lived in Centralia for eight years and had been city treasurer for about six, his term expiring in December, 1914. The United States National Bank had been named as a city depository, and he made his deposits there accordingly. They had a \$10,000 bond up. The deposits of the various city funds were not segregated in the bank account, but the city treasurer's books would show what money was in each fund. One account was carried with the United States National as "G. B. [43] Mason, city treasurer, special account," not as a special deposit but as a special account which was for refunding certain city warrants. There was a thousand dollars which has been deposited with the United States National for several years, and then there was a deposit in July, being the proceeds [44] of \$52,500.00 of water bonds. The witness guessed that it was \$50,911.88.

Witness had received interest of two per cent upon this deposit since July. He had no deposit slip showing the deposit, and no pass-book except one relating

(Testimony of Ernest G. Shorrock.)

to the special account only. He did not have a pass-book. The pass-book for the special account, which showed a balance of \$2,638.31, was then introduced in evidence as Defendant's Exhibit "E."

Witness testified that the city had received from the bonding company \$10,000.00 covering the account that it had with the United States National Bank, which was furnished to secure the city's deposits with that bank.

Defendant then offered in evidence a check of \$4,700.11 against the G. B. Mason special account, which the witness testified was the ordinary form of check he used against that account. [45]

Witness on cross-examination by plaintiff, testified that he never received any bond or any other security from the United States National except this \$10,000.00. He stated that he delivered 105 water bonds to the United States National Bank, with draft drawn on Carstens & Earles for the amount. He could not state the exact amount of the draft. They were delivered to the bank for collection. This money was to be used for the construction of a gravity water system and the bank knew at the time they were delivered the purpose for which they were devoted. The witness got notice that the collection had been made on July 21st. When he was notified of this collection he asked that the bank give him a bond to secure the city for the deposit. It was not given but the bank told him they would do so. No other bond than the \$10,000.00 was ever furnished. The bonds were left with the United States National for the purpose

(Testimony of Ernest G. Shorrock.)

of collecting and crediting his account. The witness had no pass-book and the only evidence of the collection of the \$50,911.88 was that he went down to the bank and they told him, which was the only knowledge he had about the collection or credit of that amount. There was an additional thousand dollars with the United States National which was deposited as general funds of the city. All of these three accounts, however, were subject to check. The bank paid him interest on the \$50,911.88 account. This payment was by cashier's check.

(Plaintiff then introduced in evidence the resolution of the City of Centralia, designating the United States National Bank of Centralia as depository in an amount of not exceeding \$10,000.00. This was marked exhibit 3, which said exhibit is as follows:) [46]

Plaintiff's Exhibit No. 3—Resolution of City of Centralia.

“On motion City Treasurer was instructed to designate the U. S. Nat'l Bank, Field and Lease, Bankers, the Farmers and Merchants Bank and the Union Loan & Trust Bank as Depositories of the funds of the City of Centralia, in an amount not exceeding the sum of \$10,000.00 for each of said banks, upon their compliance with Chapter 22 of the laws of 1907, as amended by chapter 40 of the laws 1909, each of said banks so far as possible to be the depository for one fourth of the funds deposited by said City.”

(Plaintiff's Exhibit No. 3, filed July 6, 1915.)

The witness testified that he never drew a check against said sum or drew a cent of the said \$50,911.88 out of the bank; that he never received any municipal bonds, warrants or other security of any character for the bank other than said bond of \$10,000, during the time he was City Treasurer and during all the times covered by the deposits referred to in this case that he and the defendant bank never entered in to any written contract to pay interest; that he never saw or heard of any such contract; that there was an original issue of \$300,000, of water bonds; that the 105 bonds delivered to the defendant bank of \$500, each, aggregating \$52,500, had been sold to Carstens & Earles; that the proceeds of the bonds were to be used for the construction of a gravity water system, and that they could not be used for any other purpose; that he never intended to deposit the money (the proceeds of said bonds) in the defendant bank without a bond.”
[47]

Testimony of L. Mabel Lee, for Plaintiff.

L. MABEL LEE, a witness on behalf of plaintiff, testified that she was the clerk of the City of Centralia and had been such since January, 1912. She stated that under the ordinance authorizing the purchase and construction of a gravity water system, there had been an election and said election was carried in favor of the bond issue. The total of the bond issue was \$300,000. The \$52,500.00 involved in this litigation was the last of that issue. They were sold a little below par.

The witness stated that she was familiar with

(Testimony of L. Mabel Lee.)

Local Improvement District Number 32 of the city as far as it related to her department. There were two warrants, 82 and 89, outstanding against that district for \$1330.00 and \$6639.00 respectively.

Thereupon it was admitted by all parties that the money to pay these warrants had been collected by the city prior to February, 1914.

These two warrants were issued against Local Improvement District Number 32. They were issued to the contractors who were performing the work on that district, and in part payment for their services. The cost of this improvement was assessed against the benefited property in a special district. This improvement district allowed payment to be made either in cash or in time, extending over a period of ten years with an annual payment; that pending the payment of assessment roll and the payment of cash thereunder, these warrants, 82 and 89, were issued to the contractor on monthly estimates; that as soon as cash was collected in the improvement district, Number 32, these two warrants became automatically called. The collection on this improvement district [48] had been between eleven and twelve thousand dollars, and only fifteen hundred dollars remained uncollected. During this period of time the City of Centralia kept money on deposit in the Field & Lease Bank of Centralia and for part of the time in the Farmers & Merchants Bank. G.B. Mason was city treasurer until 1914. He was succeeded by one Boren.

(Testimony of L. Mabel Lee.)

At the time of the failure of the United States National Bank, the city had money on deposit with the Union Loan & Trust Company and with Field & Lease. This deposit with Field & Lease at that time amounted to \$10,000.00. \$9,000.00 of this was used to pay interest on water bonds and the balance of one thousand paid interest on funding bonds. The city has received \$20,000.00 from a bonding company to cover deposits in the United States National Bank and the Union Loan & Trust Company. The city has also received three dividends to the amount of forty per cent of the original deposit, less \$20,000.00 collected from the bonding company on the deposit with the Union Loan & Trust Company. The city has received no money from the United States National Bank except the \$10,000.00 paid by the bonding company. The moneys received by the city from the defunct banks and from the bonds securing the deposits in those banks, was as follows: \$25,000.00 of the surety bonds was used to take up the gravity system warrants and \$5,000.00 was deposited to the credit of the light fund, which money was used immediately on its receipt on October 13th and November 10th, 1914.

The first dividend (witness did not state from where) was \$11,682.82, which went to take up \$11,000.00 and interest of electric light bonds the first of March, 1915. The second dividend (from where it did not appear), was appropriated [49] March 13th, 1915, to the electric light fund. This dividend was \$5,841.41. The third dividend (from where it did

(Testimony of L. Mabel Lee.)

not appear), on May 25th, was appropriated to various funds, all of which has been spent. So far as the witness knew, there was no money remaining in the treasury of the city which came out of defunct banks or from bonds which were put up to secure deposits with such banks, and there was no money in the treasury of the city which was in the Field & Lease bank, or any cash at that time (when, does not appear) which has not been spent. As far as the witness knew, the city had no money which was either in any defunct bank or with Field & Lease.

On cross-examination the witness testified that the city had collected money under Local Improvement District Number 32; that the city had on deposit with Field & Lease \$10,000.00 on September 21st, 1914. She did not know what had been there since that time. The city never segregated moneys under Local Improvement District Number 32 from moneys in its general deposit. The \$10,000.00 with Field & Lease paid interest on the funding bonds and the water bonds. This was done because it was expedient to do so and necessary for the city to meet it. In the handling of the various city funds, it was always a matter of expediency to meet expenses which were pressing and there had been loans and appropriations from one trust fund of the city to other trust funds; that moneys collected by the city in its general capacity, or acting on its special fund were all deposited as a whole, and there was no means of distinguishing one fund from the other except on the books of the city. If \$5,000.00 came

(Testimony of L. Mabel Lee.)

[50] in through electric light fund and \$5,000.00 through general taxation, it would all be placed in one general credit to the city or it might be split up as the treasurer saw fit in the various banks. When the city received three dividends on the Union Loan & Trust Company account, it was appropriated to a certain local improvement district because it was necessary to meet the payment of that fund, and was so appropriated as a matter of expediency.

It thereupon was admitted by counsel on both sides that collections on Local Improvement District Number 32 had been made in such amounts as to pay warrants Number 82 and Number 89 respectively, prior to February 10th, 1914.

Testimony of Frank A. Hill, for Plaintiff.

FRANK A. HILL, a witness for the plaintiff, testified that he was assistant and accountant to the receiver of the bank. A partial list of local improvement fund warrants of the City of Centralia which had come into the hands of the receiver and which had been called at the time of the receivership, were as follows: No. 340, \$1.50; No. 338, \$4.35; No. 335, \$21.25; No. 327, \$100.00; No. 355, \$10.93; No. 356, \$3.12; No. 339, \$7.50; No. 349, \$100.00; No. 363, \$14.37; No. 364, \$7.50; No. 365, \$7.50; No. 366, \$15.00; No. 368, \$74.60; No. 369, \$74.60.

Witness stated that this was only a partial list which he had with him; that there were some local improvement bonds also of the City of Centralia, the denominations of which he could not remember,

(Testimony of Frank A. Hill.)

but these bonds, together with the warrants above enumerated, together with warrants Number [51] 89 and Number 82 previously discussed, had come into the hands of the receiver of the bank.

**Testimony of E. G. Shorrock, for Plaintiff
(Recalled).**

E. G. SHORROCK, recalled as a witness for the plaintiff, testified that the lowest amount of money that was in nonreserve banks of the defendant bank between and including July 13th and September 19th, 1914, was described on the books as sundry banks and bankers and was \$10,938.18, which was on August 29, 1914; that the lowest amount of cash on hand and due from reserve banks and from banks not reserve was on September 17th, 1914, the total of which was \$84,089.19. The Centralia bank books showed that on July 13th, 1914, debits to the National Bank of Commerce of Seattle were as follows: Collection No. 5470, \$180.11; collection No. 5472, \$50,911.88, and an item described as sundries, \$4,416.59, the total of these being \$55,508.58.

The witness stated that the United States National Bank deposited with the National Bank of Commerce during the respective dates herein shown, during the year 1914, as follows: July 13th, \$55,508.58; July 14th, \$3,032.97; July 15th, \$27,072.18; July 15th, \$20,866.92; July 17th, \$1,930.34; July 18th, \$2,974.88; July 20th, \$4,256.16; July 21st, \$1,806.09; July 22d, \$5,755.42; July 23d, \$34,236.10; July 24th, \$12,323.63; July 25th, \$6,885.47; July

(Testimony of Ernest G. Shorrock.)

27th, \$4,854.29; July 28th, \$2,598.98. That the total deposits up to and including July 28th, 1914, was \$184,102.01.

It was conceded that the United States National Bank account with the National Bank of Commerce was overdrawn [52] on July 28th, 1914, but it was not admitted that there was an overdraft prior to that date.

Witness testified that there was a transfer from the National Bank of Commerce to the Bank of California between and inclusive of July 13th and July 28th of \$62,500 and a transfer to the Continental & Commercial National Bank of Chicago of \$20,000.00, and a transfer to the Bank of Italy of \$15,000.00. Witness could find no other transfers to other banks. On July 15th, 1914, the National Bank of Commerce was credited by the Centralia bank with \$12,225.00 which comprised three items as follows: July 13th, \$3,610.00; July 15th, \$4,870.00 and \$3,745.00. As far as the witness could ascertain, these items represented notes which were sent by the Bank of Commerce to the Centralia bank for collection.

It was admitted that these three notes, as so testified to, were sent by the National Bank of Commerce of Seattle to the United States National for collection, and that the United States National's account with the National Bank of Commerce was charged by the National Bank of Seattle with the amount thereof, and that the United States National credited a like sum on its books to the National Bank of Commerce. [53]

(Testimony of Ernest G. Shorrock.)

“Mr. PILES.—I will ask the witness this: Q. The account of the National Bank, or the amount of money shown by these books to have been in the National Bank of Commerce of Seattle was reduced on the dates you mentioned by \$12,225?

A. Yes, sir.”

Witness testified that he had a statement which showed transfers of moneys from the various banks that the Centralia bank was doing business with which covered four typewritten pages, and contained some two hundred items. The first column shows the date of the transfer; the second column shows the bank from which the transfer was made; the third column shows the bank to which the transfer was made, and the fourth column shows the amount transferred. This dealt with all the banks, including reserve and nonreserve banks. [54]

Over objection the Court admitted this statement in evidence as Plaintiff's Exhibit Number 4, the purport of which was to show that transfers were being made of credits from one correspondent bank to another by the United States National, which said exhibit as follows. [55]

Plaintiff's Exhibit No. 4—Detail of Bank Transfers.

DETAIL OF BANK TRANSFERS.

July 13, 1914, to September 19, 1914.

DATE.	BANK FROM.	BANK TO.	AMOUNT.
1914.			
July 13	Cont. & Comm. N. B., Chicago	State Bank of Tenino	4,000.00
13	Bank of Commerce, Seattle	Bank of Cal., Tacoma	10,000.00
14	do	Continental & Comm. N. B., Chicago	10,000.00
14	do	Bank of Cal., Tacoma	7,500.00
15	do	Cont. & Comm. Nat'l Bank, Chicago	10,000.00
15	Seattle National Bank	Chase Nat'l., N. Y.	3,000.00
15	Bank of Commerce, Seattle	Bk. of Cal., Tacoma	10,000.00
15	1st Nat'l Bank, San Frans.	Nat'l Bank of Com- merce, Seattle	5,000.00
15	N. W. Nat'l Bk, Minne- apolis	do	5,000.00
16	Bank of Italy, San Frans.	do	15,000.00
16	First National, Portland	Bk. of Cal., Tacoma	5,000.00
17	N. W. Nat'l Bk., Portland	1st Nat'l., San Frans.	5,000.00
20	Chase National, New York	Nat'l City, New York	
		% Winlock Bank	1,500.00
21	N. W. Nat'l Bank, Minne- apolis	Seattle Nat'l Bank	3,000.00
	First Nat'l., Portland	Bank of Cal., Tacoma	5,000.00
	Nat'l Bank of Commerce, Seattle	do	2,500.00
22	do	do	5,000.00
23	First National, Portland	do	5,000.00
	Nat'l Bank of Commerce	do	15,000.00
	do	Bank of Italy	15,000.00
	Bank of Cal., Tacoma	Willapa Harbor Bank	5,000.00
	Continental & Commercial Nat'l Bank, Chicago	Nat'l Bk of Commerce	10,000.00
	N. W. Nat'l Bank, Minne- apolis	do	5,000.00
	do	First Nat'l Bk. Fargo	1,500.00
	First Nat'l, San Francisco	State Bank of Tenino	1,000.00
	Bank of Italy	Cont. & C. Nat'l, Chicago	7,500.00

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DATE.	BANK FROM.	BANK TO.	AMOUNT.
1914.			
24	do	Nat'l Bank of Comm., Seattle	10,000.00
	National Bank of Commerce	Bank of Cal., Tacoma	5,000.00
	Cont. & Comm. Nat'l Bank, Chicago	Bank of Commerce, Seattle	5,000.00
	N. W. Nat'l Bk, Minne- apolis	do	5,000.00
25	do	State Bank of Tenino	500.00
	Cont. & Comm. Nat'l, Chicago	Chase Nat'l, N. Y.	3,500.00
	First Nat'l, Portland	Merchants Nat'l Port- land	1,000.00
	Nat'l Bank of Commerce	Bank of Cal., Tacoma	5,000.00
	Cont. & Comm. Nat'l, Chicago	Nat'l Bk of Commerce	5,000.00
27	do	State Bank of Tenino	800.00
28	First Nat'l, Portland	Bk. of Cal., Tacoma	5,000.00
	do	Merchants Nat'l, Port- land	3,000.00
[56]			
Aug. 12	Nat'l Bank of Commerce	State Bank Tenino	1,000.00
	do	Bank of Calif. Tacoma	5,000.00
	N. W. Nat'l Bk, Minne- apolis	Nat'l Bk. of Commerce	2,500.00
13	Chase National New York	1st Nat'l, S. F.	5,000.00
	Nat'l Bank of Commerce	Bank of Cal., Tacoma	1,500.00
	do	Chase Nat'l New York	5,000.00
14	1st Nat'l Portland	Bank of Cal., Tacoma	2,500.00
	Nat'l Bank of Commerce	do	2,500.00
	N. W. Nat'l Bk, Minne- apolis	Merchants Nat. Port- land	500.00
15	Nat'l Bank of Commerce	Willapa H. S. Bk. Ray- mond	2,000.00
	1st National Portland	Nat'l Bank of Com- merce	2,500.00
	National Bank Commerce	Bk. of Cal., Tacoma	5,000.00
	N. W. Nat'l Bk, Minne- apolis	Nat'l Bank Commerce	5,000.00

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DATE.	BANK FROM.	BANK TO.	AMOUNT.
1914.			
17	Nat'l Bank Commerce Cont. & Comm. N. B. Chicago	Bk. of Cal., Tacoma State Bank of Tenino	5,000.00 700.00
18	1st Nat'l Bank Portland do do National Bank Commerce N. W. Nat'l Bk, Minne- apolis Willapa H. S. Bk Raymond	N. W. Nat'l Portland Nat'l Bank Commerce Bank of Cal. Tacoma do Nat'l Bank Commerce U. L. & T. Co., Cen- tralia	1,500.00 5,000.00 5,000.00 5,000.00 5,000.00 3,500.00
19	1st Nat'l Portland National Bank Commerce N. W. Nat'l Bk, Minne- apolis	Bank of Cal., Tacoma do Nat'l Bk of Commerce	7,500.00 5,000.00 5,000.00
20	1st National Portland Nat'l Bank Commerce N. W. Nat'l Bk, Minne- apolis Olympia B. & T. Co. Nat'l Bank of Commerce W. H. S. Bank Raymond Union L. & T. Co. Centralia	Bk. of Cal., Tacoma U. L. & T. Co., Cen- tralia 1st Nat'l Bk., Portland National Bk Commerce State Bank Tenino U. L. & T. Co. Cen- tralia State Bank of Tenino	5,000.00 1,500.00 2,000.00 2,000.00 1,500.00 6,000.00 1,500.00
21	Chase National New York 1st Nat'l Portland do Nat'l Bank Commerce Cont. & Comm. Nat'l Chicago Olympia B. & T. Co. do	1st Nat'l Portland Bank of Cal., Tacoma N. W. Nat'l Portland Bank of Cal., Tacoma 1st Nat'l Portland Bank of Cal., Tacoma Nat'l Bank of Com- merce	3,000.00 5,000.00 1,500.00 5,000.00 4,000.00 5,000.00 15,000.00
22	Nat'l Bank of Commerce Chase Nat'l New York 1st Nat'l Portland do Cont. & Comm. Nat'l Chicago	State Bank of Tenino 1st Nat'l Portland Bank of Cal., Tacoma N. W. Nat'l Portland 1st Nat'l Portland	2,500.00 3,000.00 5,000.00 1,000.00 3,000.00

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DATE.	BANK FROM.	BANK TO.	AMOUNT.
1914.			
24	Willapa Harbor State Bank	Nat'l Bank of Comm.	10,000.00
	Chase Nat'l New York	do	5,000.00
	1st Nat'l Portland	Union L. & T. Co.	2,000.00
	N. W. Nat'l Bank Minne- apolis	1st Nat'l Portland	4,000.00
25	Nat'l Bank of Commerce	Olympia B. & T. Co.	15,000.00
	Olympia B. & T. Co.	Nat'l Bank Commerce	12,500.00
	Seattle National Bank	N. W. Nat'l Bk., Minneap.	2,500.00
	1st Nat'l, Portland	Bank of Cal., Tacoma	5,000.00
26	do	do	5,000.00
	do	N. W. Nat'l Bk., Port- land	1,000.00
	Nat'l Bank of Commerce	Olympia Bk & T. Co.	1,000.00
	N. W. Nat'l Bank Minne- apolis	1st Nat'l Portland	2,500.00
	Olympia B. & T. Co.	Nat'l Bank Commerce	3,795.00
	Seattle National Bank	State Bank Tenino	1,500.00
[57]			
Aug. 27	Willapa Harbor State Bank	Chase National	5,000.00
	Olympia B. & T. Co.	Nat'l Bank Commerce	2,000.00
	Seattle National Bank	State Bank Tenino	2,000.00
	1st National Portland	Bank of Cal., Tacoma	5,000.00
	Cont. & Comm. Nat'l Chicago	1st National Portland	5,000.00
	N. W. Nat'l Bank Minne- apolis	1st National Portland	2,500.00
28	Nat'l Bank Commerce	Bank of Cal., Tacona	5,000.00
29	Seattle National Bank	N. W. Nat'l Bk., Minneap.	2,000.00
	Capitol National Olympia	1st National Portland	5,000.00
31	Seattle National Bank	Cont. & Comm. Nat'l Chicago	3,000.00
	N. W. N. Bk. Minneapolis	Union L. & T. Co. Cen- tralia	5,000.00
Sep. 1	Olympia B. & T. Co.	Bank of Cal., Tacoma	2,000.00
	do	do	4,000.00
	Nat'l Bank of Commerce	do	5,000.00
	Cont. & Comm. Nat'l Bank Chicago	U. L. & T. Co. (1st Nat'l Portland)	5,000.00
	Willapa H. S. Bk. Raymond	Bank of Cal., Tacoma	10,000.00

vs. The City of Centralia.

63

DATE.	BANK FROM.	BANK TO.	AMOUNT.
1914.			
2	N. W. Nat'l Bk. Minne- apolis Seattle National Bank	W. C. S. Bk. Decorah N. W. N. Bk. Minne- polis	2,500.00 5,000.00
3	Seattle National Bank National Bank of Tacoma National Bank Commerce	Union L. & T. Co. Cen- tralia do Farmers & Merchants Bank Centralia	5,000.00 3,500.00 8,000.00
	Cap. Nat'l Bank Olympia	Nat'l Bank Commerce	2,000.00
4	Seattle National Bank National Bank Commerce	State Bank Tenino Farmers & Merchants Bank Centralia	1,500.00 4,000.00
	Cont. & Comm. Nat'l Chicago	U. L. & T. Co. Cen- tralia	2,000.00
	N. W. Nat'l Bk, Minne- apolis do	do Seattle National Bank	3,000.00 2,000.00
5	Willapa H. St. Bank Ray- mond	National Bank Comm.	15,000.00
8	1st Nat'l Portland Nat'l Bank of Commerce	N. W. Nat'l Portland Farmers & Merchants Bank Centralia	500.00 9,200.00
	do	do	4,300.00
	N. W. Nat'l Bk, Minne- apolis Olympia B. & T. Co.	Union L. & T. Co., Cen- tralia Nat'l Bank Commerce	6,000.00 5,000.00
10	Cont. & Comm. Nat'l Chicago	Union L. & T. Co., Cen- tralia	2,500.00
11	Nat'l Bank of Tacoma Cap. Nat'l Olympia do	1st Nat'l San Frans. Seattle Nat'l Bank Union L. & T. Co., Centralia	1,500.00 1,500.00 1,500.00
12	do	do	5,000.00
14	Cont. & Comm. Nat'l Chicago Cap. Nat'l Olympia Bank of Calif. Tacoma	Union L. & T. Co., Nat'l Bk of Tacoma Union L. & T. Co.,	2,500.00 5,000.00 5,000.00

64 *United States Nat. Bank of Centralia et al.*

DATE.	BANK FROM.	BANK TO.	AMOUNT.
1914.			
15	Nat'l Bank of Tacoma	Union L. & T. Co.	1,500.00
	Union L. & T. Co.	Olympia B. & T. Co.	24,050.00
	Cap. Nat'l Olympia	N. W. & N. Bk. Minne- apolis	6,000.00
16	Nat'l Bank of Tacoma	Union L. & T. Co.	3,000.00
17	State Bank Tenino	Nat'l Bank Tacoma	1,152.60
	Cap. Nat'l Olympia	do	9,000.00
18	Cap. Nat'l Olympia	Union L. & T. Co.	1,000.00
19	do	Nat'l Bank of Tacoma	7,500.00
	do	Chase National	6,500.00

(Plaintiff's Exhibit No. 4, filed July 7, 1915.)

[58]

Witness stated that he had prepared a further statement showing the account of the United States National with the Bank of California of Tacoma from July 12th, 1914, to July 20th, 1914, as shown on the books of the United States National. This statement was also introduced in evidence and marked Plaintiff's Exhibit Number 5, the purport of which was to show by date and items the amount of deposits by the United States National with the Bank of California and the withdrawals and the daily balances between those dates. A similar statement had been prepared by the witness concerning the United States National Bank's account with the Continental & Commercial Bank of Chicago between the dates of July 11th and August 6th, 1914, which statement was admitted as Plaintiff's Exhibit 6, which said exhibits are as follows: [59]

Plaintiff's Exhibit No. 5—Bank Account.

ACCOUNT WITH THE BANK OF CALIFORNIA, TACOMA, WASH.,
JULY 12TH, 1914, TO JULY 20TH, 1914.

DR.				Dr.
Date.		Details.	Total.	Balances.
July 11	Balance			4,909.34
13	Remittance Nat. Bk. of Commerce	10,000.		
	Remittance Sundries	4,237.95	14,237.95	
14	do Nat. Bank of Commerce	7,500.00		
14	Remittance Sundries	1,193.94	8,693.94	
15	do Nat. Bank of Commerce	10,000.		
	Remittance Sundries	5,270.84	15,270.84	2,195.46
16	do	20,308.56	20,308.56	11,541.37
17	do	3,433.65		
	Error remittance 7/15	.02	3,433.67	7,093.09
18	Remittance	6,633.53	6,633.53	6,103.43
20	Remittance	1,251.57	1,251.57	

#5000.00 of this amount was transferred to this bank on July 16, 1915, from First N. B., Portland.

				Cr.
Date.		Details.	Totals.	Cr. Balances.
July 13	Remittances 7/11	510.84		
	Check returned #7839	10.		
	Sundry drafts	5,093.35		
		19,939.44	25,553.63	6,406.34
14	Remittances	1,296.07		
	Sundry drafts	9,154.68	10,450.75	8,163.15
15	Remittances	449.95		
	Sundry drafts	4,462.28	4,912.23	
16	Remittances	250.36		
	Exchange	.40		
	Sundry drafts	10,711.89	10,962.65	
17	Check returned	158.26		
	Remittance	2,832.67		
	Exchange	.20		
	Sundry drafts	4,890.82	7,881.95	
18	Remittance	2,913.58		
	Sundry drafts	4,709.61	7,623.19	
20	Remittance 7/18	3,109.81		
	Sundry drafts	12,486.73	15,596.54	8,241.54

(Plaintiff's Exhibit No. 5, filed July 7, 1915.)

Plaintiff's Exhibit No. 6—Bank Account.

ACCOUNT WITH CONTINENTAL AND COMMERCIAL NAT. BANK,
CHICAGO, JULY 12TH, 1914, TO AUG. 6TH, 1914.

DR. Date.		Detail.	Total.	Dr. Balances.
July 11	Balance			17,080.95
13	Remittances Sundries from Nat. Bk.	1,272.30	1,272.30	8,751.86
14	Remittance of Commerce do Sundries	10,000. 555.61	10,555.61	19,257.92
15	do From Nat. Bk. of Commerce	10,000.00		22,718.11
	Remittance Sundries	949.94	10,949.94	
16	do do	791.05	791.05	23,482.61
17	do do	518.00	518.00	23,852.87
18	Atchinson	3,000.	3,000.00	26,502.42
20	Remittance Sundries	517.07	517.07	26,409.93
21	do do	53.64	53.64	26,263.57
22	Atchinson	2,000.		
	Remittance Sundries (From Bank of	1,501.62	3,501.62	29,135.07
23	San Frans. (Italy	7,500.00		
	Remittance—Re-discounts	15,844.06		
	do Sundries	2,010.75	25,354.81	34,197.65
24	do do	233.13		
	Collection	210.	443.13	27,090.78
25	Remittance Sundries	1,448.26	1,448.26	19,039.59
27	do do	460.79	460.79	18,397.17
28	do do	368.51	368.51	18,745.68
30	do do	75.37		
	Atchinson	2,000.00	2,075.37	6,101.50
				5,669.67
				4,102.72
Aug. 3	Remittance Sundries	2,580.15		1,373.32
				3,587.44
		Accepted By.	Due.	
#13889	Walville Lumber Co.	Eastern R. R. & Lbr. Co.	10/13/14	3,750.00
13893	Walville Lumber Co.	do do	10/15/14	4,760.00
13578	Walville Lumber Co.	Silver Mill Co.	9/29/14	3,907.09
13762	Walville Lumber Co.	Cram Lumber Co.	9/26/14	3,426.97
				<u>15,844.06</u>

DR.				Dr.
Date.		Detail.	Total.	Balances.
Aug. 4	Remittance Sundries	1,087.11	1,087.11	4,605.91
5				3,329.48
6	Atchinson	5,000.		
6	Remittance	952.67	5,952.67	

				Cr.
Date.		Details.	Total.	Balances.
July 13	Remittance 7/18	360.46		
	do 7/9	27.83		
	Tenino-Tel. Transfer	4,000.00		
	Coll. L. 7/1	5,000.00		
	Sundry drafts	213.10	9,601.39	
14	Remittance 7/11	49.55	49.55	
15	Coll.	4,950.		
	Coll.	2,500.		
15	Sundry drafts	39.75	7,489.75	
16	Exchange	.60		
	Remittance	4.40		
	Sundry drafts	21.55	26.55	
17	Remittance 7/14	130.49		
	Sundry drafts	17.25	147.74	
18	Remittance	63.25		
	Sundry drafts	287.20	350.45	
20	Sundry drafts	54.75		
	Coll. 17808	10.		
	Remittance 7/15	120.42		
	do 7/16	16.17		
	do 7/16	259.07		
	do 7/16	28.08		
	do 7/17	121.07	609.56	
21	Sundry drafts	200.	200.	
22	do do	14.89		
	Remittance 7/18	115.23		
	Tenino Tel. Transfer	500.	630.12	
23	Re-discounts	10,000.		
	Nat. Bk. of Commerce	10,000.		
	Sundry drafts	292.23	20,292.23	
24	Blumauer	2,500.		
	Nat. Bk. of Commerce	5,000.		
	Sundry drafts	50.	7,550.	
25	Remittance 7/21	500.88		
	do 7/21	23.31		
	Nat. Bk. of Commerce	5,000.		
	Sundry drafts	475.26		
	Trans. by Tel. from Chase			
	Nat. N. Y.	3,500.00	9,499.45	

(Testimony of Ernest G. Shorrocks.)

Date.		Detail	Total.
July 27	Remittance 7/23	53.88	
	Transferred to Tenino	800.00	
	Remittance 7/24	131.83	
	Sundry drafts	117.50	1,103.21
28	do do	20.	20.
29	Remittance 7/25	481.49	
	1st. Nat. Bk. Portland	10,000.	
	Sundry drafts	2,162.69	12,644.18
30	do do	2,507.20	2,507.20
31	Remittance 7/23	189.85	
	do 7/27	991.67	
	do 7/28	309.93	
	Wire	.50	
	Sundry drafts	75.00	1,566.95
Aug. 1	Nat. Bk. of Commerce	2,500.	
	Sundry drafts	229.40	2,729.40
3	Remittance 7/29	87.31	
	Exchange	.80	
	Sundry drafts	277.92	366.03
4	Remittance 7/31	16.89	
	Sundry drafts	51.75	68.64
5	Remittance 8/1	11.00	
	Telegram	.56	
	Transferred to Tenino	750.00	
	Sundry drafts	514.87	1,276.43
6	Remittance 8/3	271.85	
	1st Nat. Bk. Portland	10,000.	
	Sundry drafts	357.69	10,629.54
			1,347.39

(Plaintiff's Exhibit No. 6, filed July 7, 1915.)

[63]

On cross-examination the witness testified that at the time of the deposit with the National Bank of Commerce of the collection from the Carstens & Earles bonds, there was also deposited further items of \$180.11 and \$4,416.59 by the United States National with the National Bank of Commerce, which was a remittance from the United States National Bank to the National Bank of Commerce. As to the transfer of credit of \$62,500.00 between July 13th and July 28th, from the National Bank of Commerce to the Bank of California of Tacoma, witness could

(Testimony of Ernest G. Shorroek.)

not state how that transfer was made. [64] The first of this transfer was on July 13th when a remittance was made from the National Bank of Commerce of Seattle to the Bank of California of \$10,000.00. After crediting the \$10,000.00 which was received in that transfer from the National Bank of Commerce to the Bank of California, the United States National's account with the Bank of California was overdrawn \$6,406.34. The next remittance or transfer that was made from the Seattle Bank to the Tacoma Bank, to the credit of the United States National, was on July 14th, and was an item of \$7500.00; that at the close of business on the 15th, on the day that the transfer was made from Seattle to Tacoma, it was a fact that after crediting the \$7500.00 so transferred, the United States National Bank of Centralia was still overdrawn with the Bank of California to the extent of \$8,163.15.

The next transfer from the Seattle bank to the Tacoma bank was on July 15th, of \$10,000.00 and there were no further transfers from the Seattle to the Tacoma account of the United States National, up to and including July 20th. There had been transferred up to July 20th, of the credit with the Seattle bank and the Tacoma bank of the United States National, of \$27,500.00, and at the close of business on July 20th, after all these transfers had been made and credited in the Tacoma bank, the United States National was still overdrawn in the Tacoma bank to the extent of \$8,241.54. On July 22d, 1914, the total transferred from the Seattle bank to the Tacoma bank, to the credit of the

(Testimony of Ernest G. Shorrock.)

United States National, was \$35,000 but at the close of business on July 22d, and after this transfer had been made to the bank in Tacoma, the United States National was still [65] overdrawn with the Tacoma bank to the extent of \$11,423.69.

As to the item of the three notes , amounting to \$12,225.00 which had been returned by the National Bank of Commerce to the United States National for collection, the witness was unable to tell what had been done with them and could not say whether they had ever been collected by the United States National or not. He had tried to trace them and could not, but that he had not examined the assets of the receiver to find what he had, that he (Receiver) may have had them, and he may not.

In regard to the account of the United States National with the Continental & Commercial of Chicago, witness' examination disclosed that this account was exhausted on August 6th, 1914, when the United States National had an overdraft at the Continental & Commercial of \$1347.39.

On redirect examination, witness stated that during the period covered by the accounts introduced in evidence, the United States National was transferring in general its funds from one reserve bank to another reserve bank, and that when there was an overdraft in one reserve bank, there was a surplus in another reserve bank, or other reserve banks, and that between these dates there was never a smaller amount in the Centralia Bank, and reserve banks than \$69,000.00. If the \$12,225 concerning

(Testimony of Ernest G. Shorrock.)

which I have testified had not been so credited, there would have been no overdrafts in the National Bank of Commerce on the 28th day of July.

On recross-examination, the witness testified that between July 13th and July 28th, which was the date of the overdraft of the United States National with the National Bank of Commerce, he did not want to be understood as saying that all of this credit was utilized by transfers of credits to other reserve banks; that the only amounts that he was able to trace into other reserve agents of the United States [66] National were those that he had already testified to as going to the Continental & Commercial of Chicago and the Bank of California in Tacoma, and an additional item of \$15,000.00 to the Bank of Italy on July 23d, which was a correspondent but not reserve bank of the United States National.

On redirect examination, witness testified that there were several other small collection items in addition to the \$12,225.00 concerning which he had already testified, to wit: On July 22d, a \$2,500.00 note of the Chester Snow Log & Shingle Company, and on July 23d sundry collection items aggregating \$417.52, and on July 28th, there were two collections of \$1,485.00 and \$1,584.00 respectively, which were all that he was able to find. The total of these items was \$5,986.52, all of which items were charged by the National Bank of Commerce to the account of the United States National, and credited by the Centralia Bank to the Bank of Commerce.

(Testimony of Ernest G. Shorrock.)

On recross-examination the witness testified that as to the note of \$2,500.00 of the Chester Snow Log & Shingle Company, under date of July 22d, he could not tell what had been done with it. He did not know whether it was collected or whether it was still in the bank.

Testimony of H. O. Johnson, for Plaintiff.

H. O. JOHNSON, a witness for the plaintiff, testified that he was a general bookkeeper in the National Bank of Commerce of Seattle; that he had the books showing the state of their account with the United States National; that on July 15th, 1914, there was a note of \$4,870.00, another one of \$3,745.00, [67] and another one of \$3,610.00, the total of which was \$12,225.00. On July 13th, and July 15th, the National Bank of Commerce got credit for these items by the United States National; it shows that they were paid.

“Q. And that is what the United States National Bank of Centralia sent you as evidence of the fact that these notes had been paid?

A. It is evidence of the fact they gave us credit for the collection.

The COURT.—Is it customary when you send collections to one bank to give you credit before the note is paid? A. They might do that, yes, sir.

Q. Is that the way your bank does-

A. I think they do. I am not in the note department, if they guaranteed the note to be paid.”

The witness testified that if a person guaranteed

a note, they would have to take it up whether it was paid or not. He did not know whether the United States National had guaranteed these notes. Witness stated if "A" deposited a thousand dollar note with him, the bank does not credit "A's" account unless "A" guarantees the payment of it. In such an instance, if a note was not paid, he would debit the account with the thousand dollars already credited; that that was the ordinary custom.

Plaintiff then introduced in evidence a notation of the National Bank of Commerce of Seattle, as follows:

Plaintiff's Exhibit No. 7—Notation of National Bank of Commerce of Seattle.

"To U. S. N/B Centralia, Wn. Report by No. 55466.

Date Sent.	Payer.	Amount.	Due.	Endorser.
7/10	Eastern Ry. & Lbr. Co.	4870 3745	7/15	Note teller B. D. 96334-S. Jul. 16, 1914.

PAID

PRESIDENT'S OFFICE.

Jul. 15, 1914.

United States Nat. Bank
Centralia, Wash. [68]

PROTEST.

The favor or *prompt returns* is requested upon this
~~note~~

draft herewith enclosed for collection.

~~check~~

Do not credit until paid.

Deliver documents only upon payment.

If unpaid give full reason.

No protest unless otherwise instructed.

Respectfully.

THE NATIONAL BANK OF COMMERCE
OF SEATTLE.

(Endorsement on back:)

“Cause No. 25-E. United States District Court, Western District of Washington. City of Centralia, vs. U. S. Nat. Bank of Centralia, et al.

Plaintiff's Exhibit No. 7. Filed in the U. S. District Court, Western District of Washington, Southern Division. Jul. 7, 1915. Frank L. Crosby, Clerk. By —————, Deputy.”

Plaintiff's exhibit number 8 was thereupon introduced in evidence and is identical with exhibit number seven except that the amount is \$3,610.00, and is stamped “Paid, president's office, July 13th, 1914, United States National Bank.”

Plaintiff then introduced in evidence exhibit number 9, which is a letter of July 10th, addressed to the National Bank of Commerce, Seattle, Washington, by J. W. Daubney, cashier of the United States National Bank, which enclosed for collection draft on Carstens & Earles, for \$50,911.88, together with a package of bonds. When collected, the letter asked the National Bank of Commerce to credit [69] the same to the account of the United States National, which said exhibit is as follows:

Plaintiff's Exhibit No. 9—Letter.

“No. 8756.

THE UNITED STATES NATIONAL BANK.

CAPITAL STOCK \$100,000.00

Chas. Gilchrist, Pres.

C. S. Gilchrist, V. Pres.

Geo. Dysart, V. Pres.

J. W. Daubney, Cashier.

Ross W. Daubney, Asst. Cashier.

H. F. Gilchrist, Asst. Cashier.

CENTRALIA, WASH.

July tenth.

Nineteen Fourteen.

National Bank of Commerce,

Seattle, Washington.

Gentlemen:—

We enclose herewith for collection, draft on Carstens & Earles, Inc., for \$50,281.88 and interest. We are sending this and also package of bonds amounting to \$52,500.00 herewith by special messenger.

Kindly deliver said bonds, together with affidavits or certificates attached to Carstens & Earles upon payment of draft, together with interest on \$52,500 from May 1st to date of payment, at the rate of 6% per annum.

When paid kindly credit same to our account and advise.

Very truly yours,

J. W. DAUBNEY,

Cashier.”

Enclosures.

(Plaintiff's Exhibit No. 9, filed July 7, 1915.)

On cross-examination, the witness testified that it was customary when a remittance sheet of checks was sent to credit the account before the checks were paid, and the receiving bank would send the correspondent bank a notice that the remittance had been paid, which would be a notification like Plaintiff's Exhibits 7 and 8. If the bank had been carrying a discount note for a correspondent bank, and did not desire to carry it any longer and returns it to the correspondent bank, it is customary for the sending bank to send notice of its receipt and a statement like Plaintiff's Exhibits 7 and 8 stamped "Paid."

Witness could not state what was done with these particular notes after being returned to the United States National.

As to the state of the account between the National Bank of Commerce and the United States National, the witness stated that the United States National's account with the National Bank of Commerce was overdrawn on July 11th, 1914, to the extent of \$11,071.64.

The next transaction between these banks was on July 13th when the Centralia bank made a deposit with the National Bank of Commerce including the \$50,911.88 in dispute, but after crediting the deposits so made on July 13th, the account between these banks showed a balance in favor of the United States National of \$37,409.59.

On July 22d, 1914, at the close of business, the United States National was overdrawn with his bank \$677.32.

Defendant then introduced in evidence exhibit "A," [71] which is a transcript of the state of account between these two banks taken from the books of the National Bank of Commerce.

Defendant's Exhibit "A"—Transcript of Account of Banks.

"TRANSCRIPT OF ACCOUNT OF UNITED STATES NATIONAL BANK OF CENTRALIA WITH NATIONAL BANK OF COMMERCE SEATTLE, AS SHOWN BY THE BOOKS OF THE NAT. BANK OF COMMERCE, SEATTLE, WASH.

Date.	Memo.	Items Charged to Account of U. S. Nat. Bank.	Balance Due U. S. Nat. Bank.	Balance Due Nat. Bank Com- merce or Overdraft of U. S. Nat. Bank.	Deposits Made By U. S. Nat. Bank.	Memo.
1914, L:L July						
11				11071.64.		
13	Note	3610.00			3777.78	L.11.
	10224	150.00			50911.88	L.10.
	239	17.64			200.00	L.11.
	244	25.50			180.11	L.10.
	252	223.82				
	R.	2561.58	37409.59			
14	253	9.40			4416.59	L.13.
	212	6.50				
	256	2865.61				
	55	10000.00				
	T. T. to C&C& Wire	10000.75				
	R	1477.98	17465.94			
15	Note	4870.00			10000.00	L.14.
	Note	3745.00			2832.97	L.14.
	Ret.	5.00				
	254	26.76				
	251	24.76				
	49	7.50				
	10260	7500.00				
	T. T. & Wire	10000.75				
	R.	3561.60	557.54			

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Date.	Memo.	Items Charged to Account of U. S. Nat. Bank.	Balance Due U. S. Nat. Bank.	Balance Due Nat. Bank Com- merce or Overdraft of U. S. Nat. Bank.	Deposits Made By U. S. Nat. Bank.	Memo.
1914.						
16	258	3.65			4061.28	L. 15.
	57	24.40			10000.00	L. 15.
	63	49.15				
	59	100.10				
	64	10000.00				
	65	314.63				
	66	573.11				
	R.	593.11	2960.67			
17	69	82.00			195.67	L. 3.
	62	70.85			5866.92	L. 16.
	71	187.73				
	R.	2457.72	6224.96			
[72]						
18	10275	19.74			2873.90	L. 15.
	270	34.00			137.00	C. Cy.
						Rec'd at V
	267	300.00			1930.34	L. 17.
	231	10.00				
	261	840.00				
	277	37.50				
	278	1.69				
	R.	2291.86	7631.41			
20	10276	76.85			2779.21	L. 17.
	Ret.	300.19				
	R.	4578.12	5455.46			
21	10280	47.85			4256.16	L. 20.
	279	400.00				
	281	585.75				
	282	219.11				
	268	10.00				
	R.	2500.00				
	R.	4941.83	1007.08			
22	10291	400.92				
	288	15.10				
	287	71.17			1806.09	L. 21.
	285	10.00				
	R.	2948.75		632.77"		

(Testimony of H. O. Johnson.)

(Endorsement on Back:)

“Case No. 25-E. United States District Court, Western District of Washington. City of Centralia vs. U. S. Nat. Bank of Centralia et al. Defendant’s Exhibit “A.” Filed in the U. S. District Court, Western District of Washington, Southern Division. Jul. 7, 1915. Frank L. Crosby, Clerk. By —————, Deputy.”

Defendant then introduced in evidence, as Defendant’s Exhibit “B,” a chart, illustrative of the daily balances of the United States National Bank with the Bank of Commerce, between July 11th and July 22d, 1914, both dates inclusive, which shows that the United States National started on July 11th with an overdraft with the National Bank of Commerce of \$11,071.64. The account varied above the line of overdraft until July 22d, when the United States National had an overdraft with the National Bank of Commerce of \$632.97.

The witness testified that the books of the bank would show the actual credits and actual charges made against. [73] the account of the United States National with his bank; that the relation was just the same as any other depositor; that the bank books would show the withdrawals made and the actual condition of the account.

Redirect Examination.

(By Mr. PILES.)

Q. Now, this apparent overdraft was about \$600, you say, on the 22d day of July, and was wiped out when, according to your books?

(Testimony of H. O. Johnson.)

Mr. OLDHAM.—I object to that as immaterial and irrelevant.

The COURT.—Objection overruled; exception allowed.

A. On July 23d, it shows a credit.

Q. How much? A. \$13,809.94.

Q. Then, if the books of the Centralia defendant bank show that they had a balance in your bank of about that amount of money on the 22d day of July, and would show a balance of about \$13,000 on the 23d of July, that would be evidence of the fact that that amount was in transit from your bank to the Centralia Bank?

A. There would be items in transit from somewhere; it might be from their bank to our bank.

Q. If there were no items in transit at that time, the Centralia balance would not show a balance in your bank?

A. It would show some balance, if there were no items in transit, our books would be the same as the books in Centralia.

Q. You testified a moment ago that if an item was in transit and had not reached you, you would not give credit? A. That is right.

Q. If your bank sent any items for collection, the books would show it? [74]

A. Yes, sir.

Q. You say your books show an overdraft of \$600?

A. On the 22d shows an overdraft of about \$600.

Q. It necessarily follows that the Centralia Bank was sending you on the 22d certain moneys?

(Testimony of H. O. Johnson.)

A. Yes, sir. Their remittances on the 22d wiped out the overdraft.

Q. Is it not a fact that bankers all treat checks, drafts and credits as actual cash?

A. Well, it is treated as cash ordinarily, yes, sir.

Q. Is it not always treated as cash?

A. It is counted as cash.

Q. In other words, when you make your bank statement to the bank examiner or to the comptroller of the currency, if you have sent a draft from Tacoma on a New York Bank, and deposited that draft for \$1,000, that correspondent and yourself in making your statement to the comptroller of the currency would treat that draft as actual cash?

A. Yes, sir.

Q. And all banks do that, don't they?

A. I think they do.

Q. You do not know of any bank that does not?

A. No, sir.

Q. You could get the money if you wanted to, but in place of actual coin you take credit and treat it as cash, and the government lets you treat it as cash?

Mr. OLDHAM.—I think that is immaterial.

Objection overruled.

A. It is legal reserve anyhow.

Q. And the government allows you to count it as actual cash?

A. Well, it is counted as legal reserve. [75]

Q. Well, as a matter of fact, Mr. Johnson, there is no bank that takes any coin to speak of and puts it in reserve banks. The business of the world is

(Testimony of H. O. Johnson.)

carried on with checks and drafts? A. Yes, sir.

Q. And treated by the world as actual cash?

A. Yes, sometimes they transfer money, sometimes.

Q. They do not usually transfer actual coin, but notes, drafts and checks for collection are treated as actual cash? A. Well, it is credited as cash.

Q. Is it not treated as actual cash by all bankers?

Mr. OLDHAM.—I do not know whether this witness knows what the custom is as to all bankers.

The WITNESS.—No, sir, I do not—(interrupted).

Mr. PILES.—Q. If I go to your bank and deposit a check from John Jones in my favor for one thousand dollars on Dexter Horton Company's Bank, in Seattle, you take that check and collect it, and if you credit my account with it you treat it as actual coin, don't you?

A. Well, it is credited to the account if they knew the check was good.

Q. Well, assuming that the check is good?

A. Yes, sir.

Q. You can go to Dexter Hortons and get that thousand dollars, on the check, assuming the check to be good, if you wanted to, but instead of doing that you treat it as actual money in the vaults of your bank? A. Well, it is counted as cash.

Q. Well, is it not cash money?

A. Yes, sir. [76]

(Testimony of H. O. Johnson.)

On recross-examination, witness stated that his bank carried about ten million of deposits; that if all depositors came in at one time it would be impossible to pay them cash; that the books of the National Bank of Commerce showed the actual condition of the account of the United States National with that bank. [77]

Testimony of George B. Mason, for Plaintiff.

GEORGE B. MASON, a witness for the plaintiff, testified that he was city treasurer of Centralia from 1908 to December, 1914. That he recalled warrants Number 82 and Number 89 drawn on local improvement district for \$1330.00, \$6630.13 and \$7960.15, respectively. The city collected the money to pay these warrants in February, 1914; that he had notified C. S. Gilchrist that the money was in the treasury to take up these two warrants early in February, 1914. Two or three days later, witness asked Gilchrist why he did not bring the warrants in and get them paid. Gilchrist was vice-president and general manager of the United States National.

Plaintiff then introduced in evidence exhibit number 10, which, in substance, was a statement showing balances due the United States National Bank from its various correspondents as shown on the books of that bank between the dates of July 13th, 1914 and September 19th, 1914, both inclusive; showing balances due from reserve agents, banks not reserve agents, sundry banks and bankers and totals, which said exhibit is as follows: [78]

**Plaintiff's Exhibit No. 10—Balances Due Bank from
Various Correspondents.**

**BALANCES DUE TO THE UNITED STATES
NATIONAL BANK OF CENTRALIA FROM
ITS VARIOUS CORRESPONDENTS. (As
shown by the books of the U. S. N. B. Centralia.)**

Date. 1914.	Reserve Agents.	Banks Not Reserve Agents.	Sundry Banks and Bankers.	Total.
July 13	88,971.55	43,189.16	18,743.88	150,903.79
14	82,964.31	44,298.50	18,942.56	146,205.37
15	69,056.56	46,069.99	11,974.99	127,101.54
16	97,967.27	31,525.82	8,594.04	138,087.13
17	96,582.78	30,542.54	8,378.67	135,503.99
18	99,745.42	29,610.56	8,279.08	137,635.06
20	94,844.71	27,218.87	11,965.27	134,028.85
21	71,304.73	24,165.36	13,720.05	109,190.14
22	70,520.54	23,986.72	7,212.94	101,720.30
23	88,294.91	24,836.61	12,601.24	125,732.76
24	79,915.93	14,983.19	21,893.59	116,792.71
25	104,245.33	15,953.49	25,138.92	145,337.74
27	94,709.56	15,388.34	37,672.04	147,769.94
28	46,082.48	12,589.86	66,144.63	124,816.97
29	41,199.88	15,809.52	72,428.14	129,437.54
30	33,709.60	10,309.52	72,831.84	116,850.96
31	26,426.74	10,309.52	81,278.34	118,014.60
Aug. 1	52,446.79	15,487.48	42,894.09	110,828.36
3	35,493.33	20,767.62	45,914.49	102,175.44
4	28,387.56	20,279.12	18,235.38	66,902.06
5	22,802.74	23,587.76	19,213.82	65,604.32
6	27,346.48	20,677.94	18,047.93	66,072.35
7	39,914.66	15,578.15	8,610.79	64,103.60
8	50,011.62	15,972.57	11,193.93	77,178.12
10	39,726.39	15,888.17	1,136.79	56,751.35
11	46,907.32	15,356.03	736.48	62,999.83
12	64,157.21	12,856.03	2,132.09	79,145.33
13	104,845.38	12,856.03	630.94	118,332.35
14	99,144.19	12,856.03	1,358.16	113,358.38
15	99,641.98	12,853.78	2,568.07	115,063.83

Date.	Reserve Agents.	Banks Not Reserve Agents.	Sundry Banks and Bankers.	Total.
Aug. 17	109,749.51	12,853.79	267.48	122,870.77
18	87,264.41	12,853.78	65.90	100,184.09
19	70,989.16	12,853.78		83,842.94
20	75,349.47	12,852.98		88,202.45
21	87,840.82	12,852.98		100,693.80
22	73,587.03	12,582.98	1,463.20	87,903.21
24	102,267.33	12,852.98	445.72	115,566.03
25	93,298.06	13,145.46		106,443.52
26	96,694.	13,145.46	618.52	110,457.98
27	90,453.29	8,139.49	3,295.47	101,888.25
28	88,013.81	8,139.49	2,857.61	99,010.91
29	89,096.21	8,139.49	2,798.69	100,034.39
31	72,576.26	11,843.62	5,358.20	89,778.08
Sept. 1	61,487.22	13,423.93	5,248.17	80,159.32
2	79,908.15	27,833.82	5,871.67	113,613.64
3	65,826.90	25,238.80	6,498.29	97,563.99
4	65,030.33	27,051.16	7,221.55	99,303.04
[79]				
5	79,045.54	26,768.60	3,902.04	109,716.18
8	75,804.94	27,652.25	4,846.29	108,303.48
9	68,075.17	27,398.06	910.21	96,383.44
10	63,970.37	36,551.50	983.18	101,505.05
11	64,639.57	33,954.36	735.87	99,329.80
12	69,792.00	32,006.27		101,798.27
14	55,340.97	36,805.09		92,146.06
15	65,429.64	20,223.91		85,653.55
16	40,532.70	22,920.18		63,452.88
17	45,613.94	14,947.39		60,561.33
18	43,174.42	27,293.90		70,468.32
19	46,052.32	14,974.69		61,027.01

(Plaintiff's Exhibit No. 10, filed July, 7, 1915.) [80]

Plaintiff also introduced in evidence exhibit number 11, which is a transcript from the books of the United States National Bank of Centralia, showing the state of the account between that bank and the National Bank of Commerce between the dates of July 11th and September 19th, 1914, both inclusive.

**Testimony of E. G. Shorrock, for Plaintiff
(Recalled).**

E. G. SHORROCK, recalled by plaintiff, identified exhibit number 11.

On cross-examination, the witness stated that his entries under the word "Sundries" on exhibit number 11, were shown on the bank books under the letter "R"; that "R" has a significance and means "Remittance." That the witness had [81] substituted the word "Sundries" for Remittances on exhibit number 11.

Witness stated that he could not tell what these remittances composed but from his examination he could not find that any of them were cash.

Defendant then introduced in evidence exhibit "C," which is a claim of the United States Fidelity & Guaranty Company against the United States National Bank in the sum of \$10,000.00, which had been paid by the bonding company of the City of Centralia on the deposits of the city with the United States National.

Defendant then introduced in evidence exhibit "D," being a receipt of W. G. Boren, city treasurer of Centralia, to G. B. Mason, city treasurer resigned of City of Centralia, showing receipt of \$16,315.92, represented by cash in drawer and checks on solvent banks; claim of \$54,550.19 against United States National Bank and claim against the Union Loan & Trust Company, in the hands of the receiver, of \$78,-414.12, less amounts paid by bonding companies of \$30,000.

(Testimony of E. G. Shorrock.)

Defendant then introduced in evidence pass-book of G. B. Mason, treasurer, "special," which is exhibit "E," which is the usual pass-book showing deposits, credits and withdrawals, and a balance of \$2,638.31.

Defendant then introduced in evidence exhibit "F," which is a check drawn by G. B. Mason on the G. B. Mason special account, which is in the ordinary form of the usual bank checks, signed "G. B. Mason, special account, city treasurer."

Defendant then introduced some testimony of F. A. Hill, taken at the preliminary hearing, starting with page [82] 85, line 12, down to and including line 3, page 90, which is as follows:

The witness F. A. HILL, in behalf of the defendants, testified on the preliminary hearing that he was clerk of the receiver of the United States National. The G. B. Mason special account of some twenty-six hundred dollars, together with approximately seven thousand of the treasurer's other account, was assigned by the city treasurer to the bonding company who paid the City of Centralia \$10,000.00. This wiped out the special account of G. B. Mason of some twenty-six hundred dollars and reduced the other account some seven thousand. For this amount the bonding company has filed a claim with the receiver.

The witness stated that when the bank failed, there was \$27,899.81 in cash turned over to the receiver; that there was only \$4,596.61 available from banks not reserve agents at that time. While the books of

(Testimony of E. G. Shorrock.)

the bank showed a larger amount deposited with the reserve agents when the bank failed, there were many off-sets claimed by the various banks holding these deposits. For example, the First National of San Francisco, the United States National's books showed a credit balance there of some \$22,000.00, but when the receiver applied for it, there was an off-set claimed in excess of \$50,000.00. The condition of the account with the First National of Portland was similar.

Defendant then introduced in evidence the testimony of C. S. Gilchrist, taken at the preliminary hearing, starting on page 64, line 21 and ending on page 66, line 8. The witness testified that none of the moneys derived from the bonds sold to Carstens and Earles, or the proceeds of the bonds, ever came into the United States National Bank; that [83] these proceeds were disposed of in the usual custom of disposing of credits of that kind in payment of the obligations of the bank as they were presented in the regular course of business. Mr. Mason knew how the transaction was handled and had instructed the witness to place the proceeds of the collection to his credit.

**Testimony of H. O. Johnson, for Defendant
(Recalled).**

H. O. JOHNSON was recalled as a witness for the defendant and testified that a package of papers introduced as Defendant's Exhibit "G" showed the charges that were made against the account that the Centralia bank had with the National Bank of Com-

(Testimony of H. O. Johnson.)

merce, covering the dates between July 13th and July 22d, 1914, both inclusive. The first debit slip was an item of \$3,610.00 against the Centralia bank and is stamped "Paid, National Bank of Commerce of Seattle, July 13th, 1914," showing that its payment was made on the same day that the item was made out. Witness explained that it was a debit ticket for a note that had been sent to the Centralia bank, and the National bank simply marks the ticket "Paid" and forwards the note to the Centralia bank; that the stamp mark "Paid" has no bearing upon the question whether the note has actually been paid. * * *

"Q. The stamp marked 'Paid' has no bearing upon whether or not the note itself is actually paid.

A. No, sir, it would not show at all."

"On cross-examination the witness testified that Centralia is a station between Seattle and Portland; that it would only take a few hours to transmit mail from Seattle to Centralia; that they have mail only once or twice a day, and that an item transmitted between the points would arrive the next day."

On cross-examination, the witness stated that the item had not reached the Centralia bank until the next day; that it was sent marked "Paid" by the National Bank of Commerce on the day that it was sent out. [84]

**Testimony of Frank A. Hill, for Defendant
(Recalled).**

FRANK A. HILL, was recalled as a witness on behalf of the defendant. He testified as to Defendant's Exhibit "A," which is a transcript of account

(Testimony of Frank A. Hill.)

of the United States National Bank with the National Bank of Commerce, that on July 11th, there was an overdraft with the National Bank of Commerce against the United States National of \$11,071.64. The next transaction between the banks occurred on July 13th when deposits or credits aggregating \$54,000 were deposited in that account, which included \$50,911.88, which is the matter in dispute in this action. Referring to Defendant's Exhibit "G," which represented the withdrawals from that account between July 13th and July 22d, both inclusive. Witness testified that the first withdrawal of \$3,610.00, with which the account of the United States National was charged was a Wallville note which was accepted by the Eastern Railway & Lumber Company, which had been sent by that company to the United States National Bank of Centralia. The note had been discounted by the United States National Bank with the National Bank of Commerce. This note, together with two similar notes of \$4,870.00 and \$3,745.00, respectively, was charged by the National Bank of Commerce to the United States National, and credited by the latter bank to the former on July 15th, 1914, making a total sum of \$12,225.00. These notes were a part of an issue of \$20,400, being all notes drawn by the Wallville Lumber Company and accepted by the Eastern Railway & Lumber Company, and when due, were replaced by a new series. The original notes were returned to the United States National Bank of Centralia by the National Bank of Commerce and were credited to

(Testimony of Frank A. Hill.)

the account of the National Bank of Commerce, a [85] debit occuring on one side and a credit on the other side. The bank did not receive money on these notes from either the makers or acceptors, but a new issue of \$20,400 took the place of the old ones. The new issue was made up of different denominations and just what exactly became of these particular items is not traceable. However, of the total re-issue of \$20,400.00, part were sent to the Continental & Commercial Bank of Chicago and part were returned to the National Bank of Commerce at Seattle. Two of these new issue notes, one for \$3,685.00 and another for \$3,240.00, were sent to the National Bank of Commerce on July 23d; two for \$3,750.00 and \$4,760.00 were sent to the Continental & Commercial in Chicago. Still another one for \$4,965.00 was sent to the First National of Portland. The two that were sent to the National Bank of Commerce were credited by that bank to the United States National on July 23d.

The next overdraft of the United States National with the National Bank of Commerce occurred on July 29th when this overdraft was \$87.98. The two renewal notes which went to the Continental & Commercial, were sent out on July 23d, 1914, on which date they were charged to the Continental on the books of the United States National. About eight days after that the Continental & Commercial bank gave the United States National credit for them. The other note was sent to the First National of Portland on July 23d. The United States National

(Testimony of Frank A. Hill.)

was overdrawn with the First National of Portland on July 29th, 1914.

The second item of \$150.00 on exhibit "A" was an overdraft drawn by the United States National on the National Bank of Commerce, in favor of one Glaser. There is [86] nothing in the books of the bank to show how this was secured, whether by money or by check on the deposit account.

The next item was a draft for \$17.64 drawn in favor of one Terrey. The record showed it was secured by one Alvord who was a depositor in the United States National Bank.

The next item is a draft for \$25.50, payable to the order of the Seattle National. There is nothing in the records of the bank to show how the bank was secured.

The next item was a draft for \$223.82, payable to the order of the First National Bank of Seattle and was in exchange for checks which the First National Bank had honored, drawn on the United States National and other banks in Centralia.

The next item of \$2,561.58 represents checks honored by the National Bank of Commerce drawn on the United States National and other banks in Centralia. This item of \$2,561.58 is covered by remittance sheet which is the seventh paper in Defendant's Exhibit G, which shows that a large part of the payment was to depositors in the United States National for checks which they had cashed in Seattle or had been cashed through the Seattle bank; that all of the checks which had the letter "U" standing opposite the amount were checks drawn on the United States National Bank of Centralia.

(Testimony of Frank A. Hill.)

The next item was \$9.40, being a draft drawn in favor of a Seattle bank for checks it had cashed and was simply a repayment to that bank for checks the Seattle bank had paid on the United States National.

The next item was a draft of \$6.50 in favor of one Browning and secured by one Keefe, who was a depositor in the United States National; whether secured by money, check or [87] draft was unknown.

The next item of \$2,865.61 was a draft drawn in favor of the First National Bank of Seattle and was in exchange for checks which that bank had honored on the United States National and other banks in Centralia.

Passing the next two items which were transfers to the Continental & Commercial Bank of Chicago of \$10,000.00 and \$10,000.75 respectively, the witness testified that the following item of \$1,477.98 covered checks honored by the National Bank of Commerce which were drawn on the United States National and other banks in Centralia, the remittance sheet being contained in Defendant's Exhibit "G." That was on July 14th. A large majority of these checks were checks of the United States National's own depositors.

The next two items of \$4,870.00 and \$3,745.00 were identical charges as the first item under July 13th which was a Wallville paper.

The next item of \$5.00 covered a charge made by the National Bank of Commerce on account of a check which had been sent it by the United States National for which there were not sufficient funds.

The next item was \$26.76, payable to the order of

(Testimony of Frank A. Hill.)

the Seattle National Bank and secured by the freight agent (at Centralia). There is nothing to show on the records of the bank how this item was secured.

The next item of \$24.76 was in favor of one Terry, city treasurer, secured by one Young and it is impossible to tell how the item was obtained.

The next item was \$7.50, payable to the order of the Aetna Investment & Trust Company on which there was no [88] information.

The next item was \$7,500.00 and has already been covered by his testimony, being a transfer of credit to the Bank of California, and the next item of \$1,000.75 was a transfer to the Continental & Commercial of Chicago.

The next item of \$3,561.60, under date of July 15th, represented the amount of checks drawn on the United States National which were honored by the National Bank of Commerce. All of the checks in this particular remittance were on the United States National and the remittance sheet is contained in Defendant's Exhibit "G" under date of July 15th.

The next item of \$3.65 was a draft drawn in favor of Wooley & Company and there is no information concerning it.

The next item of \$24.40 was payable to the order of the Seattle National Bank, and there is no information concerning it.

The next item of \$49.15 is payable to Schwabacher Brothers and there is no information concerning it.

The next item of \$100.10 is payable to the order of the National Bank of Commerce and there is no information concerning it.

(Testimony of Frank A. Hill.)

The following item of \$314.63 is a draft drawn in favor of the First National Bank of Seattle and was in exchange for checks which that bank had honored which were drawn on the United States National and other banks in Centralia.

The next item of \$573.11, payable to the order of the First National Bank of Seattle, was in exchange for checks which that bank had honored which were drawn on the United States National and other banks in Centralia. [89]

The next item of \$593.11 was for checks honored by the National Bank of Commerce drawn on the United States National and two other banks in Centralia. The remittance sheet covering it is included in Plaintiff's Exhibit "G" under date of July 16th.

The next item was a draft for \$82.00, payable to the order of one Mulligan. There is nothing in the records of the bank to show how this draft was secured.

The next item was \$70.85, with no method of determining what the item covered.

The next item of \$187.73 was in favor of the First National of Seattle, given in exchange for checks which had been honored in that bank drawn on the United States National and other banks in the City of Centralia.

The next item of \$2,457.72 represents checks honored by the National Bank of Commerce, drawn on the United States National and one other bank in Centralia. The remittance sheet is included in Defendant's Exhibit "G" under date of July 17.

(Testimony of Frank A. Hill.)

The next item of \$19.74 was a draft payable to the order of the New York Life, and there is no way of determining how it was secured.

The next item of \$34.00 was a draft payable to the Seattle National and there is no way to tell how it was secured.

The next item was for \$300.00, a draft payable to the order of the Bank of Vancouver, and was in exchange for a certificate of deposit, Number 11,971, which was issued to the United States National.

The next item was a draft for \$10.00 payable to one Ketchum, with nothing to show how it was secured. [90]

The next item was a draft for \$840.00, drawn in favor of one Brown, in exchange for certificate of deposit Number 12,021 issued by the United States National.

The next item was a draft for \$37.50, drawn in favor of the First National Bank of Seattle in exchange for checks honored by that bank drawn on the United States National and other banks in Centralia.

The next item was a draft for \$1.69, drawn in favor of the First National of Seattle for some small collection.

The following item of \$2,291.86 represented the amount of checks honored by the National Bank of Commerce, drawn on the United States National and two other banks in Centralia, the remittance sheet being included in Defendant's Exhibit "G" under date of July 18th.

(Testimony of Frank A. Hill.)

The next item of \$76.85 was a draft payable to the order of the Seattle National Bank and there is nothing to show how it was secured.

The following item of \$300.19 represents the amount of a check which had been previously sent to the National Bank of Commerce, drawn on the Metropolitan Bank and returned to the United States National on account of an endorsement. The United States National, in turn, charged that amount to one Reese and credited the account of the National Bank of Commerce.

The next item of \$4,578.12 represents the amount of checks honored by the National Bank of Commerce, drawn on the United States National and other banks in Centralia, the remittance sheet being included in Defendant's Exhibit "G" under date of July 20th. [91]

The next item of \$47.85 was a draft payable to the order of the Seattle National Bank and there is nothing to show what was exchanged for the draft.

The next item of \$400.00 was a draft drawn in favor of Edgar Battel, postmaster, secured by one Benedict, postmaster of Centralia.

The next item of \$585.75 was a draft drawn in favor of the First National of Seattle and was given in exchange for checks honored by that bank drawn on the United States National and other banks in Centralia.

The next item of \$219.11, payable to the National Bank of Commerce, with the same testimony applicable.

(Testimony of Frank A. Hill.)

The next item of \$10.00 was a draft payable to the order of a typewriter company with nothing to show how it was obtained.

The next is an item of \$2,500.00. This was the note of the Chester Snow Log & Shingle Company which the National Bank of Commerce had charged to our account and returned the note to us. This note was a discount with the National Bank of Commerce, and falling due, was returned by that bank to the United States National. Upon its return it was carried by the United States National until July 28th, when there appears a charge to the account of Chester Snow who had a deposit in the United States National, and on that date the note disappears. The records show that the note was thus charged to the account of the maker, the Chester Snow Log & Shingle Company. The Chester Snow Log & Shingle Company were overdrawn and were indebted to the United States National at the time of insolvency to the extent of \$80,000.00. That company is in the hands of a receiver and [92] it is very doubtful whether they will pay even preferred claims. The bank has never collected anything from that company which was charged to the Chester Snow account and no one else has paid the bank anything for it.

The next item of \$4,941.83 represents the amount of checks honored by the National Bank of Commerce, drawn on the United States National and one other bank in Centralia, the remittance sheet being included in Defendant's Exhibit "G" under date of July 21st.

(Testimony of Frank A. Hill.)

The next item of \$400.92 was a draft drawn in favor of the First National of Seattle and was given in exchange for checks honored by that bank drawn on the United States National and other banks in Centralia.

The next item of \$15.10 was a draft drawn in favor of one Patterson, and there is nothing to indicate what was given in exchange for it.

The next item of \$71.17 was a draft drawn in favor of Fisher Brothers, and there is nothing to show what was given in exchange for it.

The next item of \$10.00 was a draft drawn in favor of one Duryee, and there is nothing to show what was given in exchange for it.

The last item of \$2,948.75 represents the amount of checks honored by the National Bank of Commerce drawn on the United States National and two other banks in Centralia, the remittance sheet being included in Defendant's Exhibit "G" under date of July 22d.

After the last charge of \$2,948.75 on July 22d, the United States National's account with the National Bank of Commerce was overdrawn \$632.77. *The wit-* [93]

The witness then testified that the amount of cash deposited over the counter of the United States National Bank from July 28th, 1914, until the bank was closed September 19th, 1914, was \$129,372.92. This included nothing except actual cash. The total claims of creditors of the bank was \$1,203,140.35. A one hundred per cent assessment had been levied

(Testimony of Frank A. Hill.)

against all its stockholders. There are not sufficient assets of the bank to pay in full. The bank had been insolvent since September 21st, 1914, and there had been paid one dividend of ten per cent.

On the day the bank failed, there was actual cash on hand which passed into the hands of the receiver of \$27,899.81. Cash items on that date amounted to \$5,206.84. The witness did not count the counterfeit coins as cash. Of the cash items of over five thousand dollars, the major part of them are still carried uncollected. They include checks that are cashed after the making up of the cash-book by the teller; clearances for the day and current expenses of the bank during that day. They are not always converted into cash.

Taking up the condition of the account between the United States National and the Bank of California in Tacoma, witness stated that on July 29th, 1914, the United States National was overdrawn with the Bank of California in the amount of \$1,213.68; that after the deposit of the Wallville paper, to which witness had previously referred, with the First National of Portland, the next overdraft of the United States National with the First National of Portland occurred on August 5th, 1914.

As to the Bank of Italy, witness testified that [94] at the time the receiver took charge of the affairs of the United States National, the United States National was indebted to the Bank of Italy in the sum of over fifty-nine hundred dollars, for which amount the Bank of Italy had filed its claim and it had been allowed.

(Testimony of Frank A. Hill.)

On cross-examination, the witness stated that the Wallville notes, aggregating \$12,225.00 had been discounted by the National Bank of Commerce on the guarantee of the United States National; that they were then sent back to the United States National; when they fell due that bank gave the Seattle bank credit for their amount. That there was subsequently a renewal of this paper and \$6,925.00 of the renewal notes were taken by the National Bank of Commerce again on the credit of the United States National. Witness did not know where those notes were and said he thought they had been paid to the Seattle Bank. The items were sent to the United States National, to its reserve and other banks for collection and credit.

“Q. How was the business conducted between the defendant bank and its reserve banks and the other banks it was doing business with, that is to say, did they or did they not send items out for collection and credit, or for collection and return?”

A. Items were sent for collection and credit.

Q. So the Centralia bank then had a general account running with all of these other banks, and if it sent out a note for collection, for instance, or a draft or check or any other item, that bank, whether it was a reserve or nonreserve bank, would credit the account of the Centralia Bank and the Centralia Bank would charge it to the bank to whom it sent this item? A. That was the usual course, yes, sir.”

That between July 21st and 22d, both dates inclusive, the defendant bank transferred from the Na-

(Testimony of Frank A. Hill.)

tional Bank of Commerce and other reserve banks, possibly \$47,500.00. On July 13th, they transferred to the Bank of California in Tacoma \$10,000.00; July 14th, Chicago, a telegraphic transfer [95] of \$10,000; the Bank of California, Tacoma, July 15th, \$7,500.00; July 15th, Chicago, telegraphic transfer, \$10,000.00; the Bank of California, Tacoma, July 16th, \$10,000.00. There was transferred from the National Bank of Commerce of Seattle to the Bank of California on July 23d, according to the books of the Seattle bank, \$2,500.00 and \$5,000.00, making a total of \$7,500.00. According to the books of the Centralia bank, the transfer took place on the 22d or 21st.

Of the cash items of \$5,205.00 and some cents with the bank when it failed, witness stated there was about four thousand left uncollected. He stated that as to the Bank of Italy account when the United States National failed, the Italy bank held some rediscounts of the United States National upon which the United States National was liable. These rediscounts being worthless, the other bank filed their claim and it was allowed. What little balance the United States National had there was applied on the rediscounts before the claim was allowed. The credit balance of \$5,662.71 which the United States National had with the Bank of Italy on September 19th was applied on the Wabash Lumber & Shingle Company notes. The Bank of Italy filed a claim within a week after that time.

(Testimony of Frank A. Hill.)

On redirect examination, the witness stated that the relation between the United States National and the Bank of Italy was that the books showed a deposit with the Bank of Italy which had been wiped out by the claim of the Bank of Italy against the United States National and the balance was applied on notes which the United States National owed [96] the Bank of Italy.

On recross-examination, the witness stated that the claim of the bank was a general one and did not claim priority. In answer to a question by the Court as to the \$20,400.00 notes of the Wallville paper, some six hundred dollars went back to the Seattle bank and "You understood those notes were paid?"

A. Those notes have been taken up after the bank failed.

Q. That is the United States National Bank did not pay them?

A. No, sir; they were taken up by the Eastern Railway & Lumber Company.

Q. The endorser?

A. The endorsers or acceptors, they were acceptors.

Q. And is the same true of the rest of the \$20,400?

A. Yes, sir.

Q. And at the time the Chester Snow Log & Shingle Company paper was charged to their account, was the money in their account to the amount of the notes they were charged with?

A. They had a credit in excess of that amount; yes, sir."

(Testimony of Frank A. Hill.)

On redirect examination, the witness then took up the state of account between the United States National and the National Bank of Commerce from July 22d to July 28th, in detail.

“Q. Leaving off, Mr. Hill, where the overdraft of the Centralia Bank occurred with the Seattle Bank on July 22d, according to the books of the Seattle Bank, I will ask you to further trace the transfer of the credit existing at the Seattle Bank from that date up to and including the 28th of July when the overdraft occurred on the books of the Centralia Bank.”

The next item charged to the account of the United States [97] Bank by the National Bank of Commerce was \$15.00, being a draft drawn in favor of one Stary. It is impossible to say what was given in exchange for it. That was on July 23d.

The next item was a transfer of \$2,500.00 to the Bank of California. The next item was for \$79.25, payable to the order of the Seattle National Bank and he did not know what was given in exchange for it. The next item for \$59.20 was a draft drawn in favor of the Seattle National and he could not say what was given in exchange for it. The next is an item for \$5,000 and is a draft drawn in favor of the Bank of California of Tacoma. The next item of \$99.34 is a draft drawn in favor of the First National Bank of Seattle in exchange for checks which they had honored drawn on the United States National and other banks in Centralia. The next item was for \$559.27 and represented the amount of checks

(Testimony of Frank A. Hill.)

honored by the National Bank of Commerce drawn on the United States National and other banks in Centralia, the remittance sheet being included under date of July 23d. The next item of \$18.50 covered a previous item sent to the National Bank of Commerce and returned because of nonpayment. It was charged to the account of Ely & Ely on the books of the United States National and credit given the National Bank of Commerce, Ely & Ely being depositors in the United States National. The next item was for \$85.00 drawn in favor of one Pease and witness could not say what was given in exchange for it. The next item of \$56.50 was a draft drawn in favor of the First National Bank of Seattle in exchange for checks honored. The next item of \$1,500.00 was a collection sent by the First National Bank of Seattle for which the United States National received no money. The [98] next item of \$33.30 was a draft drawn in favor of the National Bank of Commerce, for what was given he could not say. The same applies to the next item of \$175.00. The next item of \$15,000.00 was payable to the order of the Bank of California. The next item was for \$24.90, a draft drawn in favor of the Exchange National Bank of Spokane. The next item is for \$84.22, being a small collection sent to the United States National and it is impossible to determine whether they got any money on it or not. The next item of \$333.30 was a collection drawn on one Boerman which was sent to the United States National by the National Bank of Commerce and was cleared

(Testimony of Frank A. Hill.)

through the Farmers and Merchants Bank of Centralia. The next item was for \$4.85, a small check which had been previously sent to the National Bank of Commerce by the United States National, and was returned because of a locking endorsement. The next item of \$3,132.34 represented the amount of checks honored by the National Bank of Commerce drawn on the United States National and other banks in Centralia, the remittance sheet being included under date of July 24th. The next item of \$8.85 was a check which had previously been sent to the National Bank of Commerce and returned because of insufficient funds. This check was in turn charged by the United States National to the account of the City Sand & Gravel Company which was a depositor in the bank and like credit given the Seattle bank. The next item was for \$213.19, payable to the order of the First National Bank of Seattle in exchange for checks which they had honored. The next item for \$5,000.00 was a draft drawn in favor of the Bank of California, Tacoma. The next item of \$66.15 was drawn in favor of the Seattle National [99] bank and witness could not say what was given in exchange for it.

The next item of \$25.00 was a draft drawn in favor of one Grant and witness could not say what was given in exchange for it. The next item of \$6,272.35 represented the amount of checks honored by the National Bank of Commerce drawn on the United States National and other banks in Cen-

(Testimony of Frank A. Hill.)

tralia, the remittance sheet being included under date of July 25th. The next item was a draft for \$1.00, payable to the Logged Off Farm. The next item is of the same character. Both were procured by J. W. Daubney who was a depositor in the bank. The next item of \$25.00 was a draft drawn and it is impossible to tell what was given in exchange for it. The next item of \$81.50 was a draft payable to the National Bank of Tacoma and it cannot be ascertained what was given in exchange for it. The next is a draft for \$5,000.00 drawn in favor of the Bank of California, Tacoma. The next item of \$242.63 was a draft drawn in favor of the First National Bank of Seattle, given in exchange for checks honored by that bank drawn on the United States National and other banks of the city of Centralia. The next item for \$1,971.92 was a draft in favor of the Fidelity Bank of Tacoma, given in exchange for checks which that bank had honored drawn on the United States National and other banks in Centralia. The next item for \$47.10 was a draft drawn in favor of the Seattle National and it is impossible to tell what was given in exchange for it.

The next item was for \$3,069.00, being two notes of the Wallville Lumber Company accepted by the Eastern Railway & Lumber Company of similar character to the first item to which witness had testified. The United States [100] National had never received payment of those two notes. The next item of \$10,067.70 represented checks honored by the National Bank of Commerce drawn on the

(Testimony of Frank A. Hill.)

United States National and other banks of Centralia, the remittance sheet being included under date of July 27th. The next item of \$50.00 was drawn in favor of the United States National Bank of Seattle and witness could not say what was given in exchange for it. The next item of \$200.15 was a draft drawn in favor of one Meyer, assistant treasurer and it is impossible to say what was given in exchange for it. The next item of \$80.70 was a draft in favor of the Seattle National Bank and it is impossible to tell what was given in exchange for it. The next item of \$163.00 was a draft drawn in favor of the Meyer Piano Company and it is impossible to tell what was given in exchange for it. The same applies as to the following item of \$25.00, and also the same as to the next item of \$1,400.00.

The next item of \$43.45 was payable to the order of the First National of Seattle. It was given in exchange for checks which they had honored, and the same is true of the next item of \$2,000.00 in favor of the First National of Seattle. The next item of \$2,827.35 represents checks honored by the National Bank of Commerce drawn on the United States National and other banks in Centralia, the remittance sheet being included under date of July 28th. The next item was a draft for \$50.00. The witness could not state what it was given for. The next item was for \$2,500.00, being a transfer to the Bank of California. The next item of \$52.50 was a draft and what was given in exchange for it, the witness could not state. [101]

(Testimony of Frank A. Hill.)

The next item of \$134.60 was a draft payable to the order of the First National of Seattle, given in exchange for checks honored. The next item was a draft for \$8,000, being the balance due the Chehalis National Bank on the clearing of warrants. The next item of \$229.39 was payable to the First National Bank of Seattle, and was given in exchange for checks honored. The next item of \$1,466.41 represented the amount of checks honored by the National Bank of Commerce, drawn on the United States National Bank of Centralia and other banks in Centralia, the remittance sheet being included under date of July 20th.

The written evidence of these charges was then introduced in evidence and included in Defendant's Exhibit "H."

During this period of time the only remittances which were made to any other correspondent bank was that to the Bank of California. The first of these was on July 20th, of \$2,500.00, on which date a draft was drawn on the Seattle account and transferred to the Bank of California. After this transfer the state of account between the United States National and the Bank of California was that the United States National was overdrawn to the Bank of California at the close of business on July 20th, \$8,241.54.

The next transfer as shown by exhibit "G" from the Seattle account to the Bank of California was \$5,000.00 on July 21st. At the close of business on the 21st, the Centralia bank was still overdrawn

(Testimony of Frank A. Hill.)

with the Bank of California, \$2,524.62.

The next transfer to the Bank of California from the Seattle account was \$15,000.00 on July 22d. After this [102] transfer which was actually made on July 23d, there was a balance with the Bank of California in favor of the United States National of \$453.38. The next transfer was \$5,000.00 to the Bank of California on July 24th. After giving credit for that in the Bank of California, the United States National was overdrawn with the Bank of California \$3,004.54.

On the 25th of July, an additional transfer of \$5,000.00 was made from the Seattle account to the Bank of California. After this transfer was made, there was a balance of \$2,251.08 due the United States National from the Bank of California.

The last transfer from the Seattle bank to the Bank of California was a draft of July 27th for \$2,500.00, and after the deposit of that in the Bank of California, the United States National had a balance there of \$1,355.05. This was at the close of business on July 28th. On July 29th, the United States National was overdrawn with the Bank of California, \$1,213.68.

On cross-examination, witness said that whether the United States National had not transferred from the National Bank of Commerce to other reserve banks between July 13th and July 28th, 1914, \$82,500.00, he had not compiled the figures and could not say; that they had \$55,000.00 up to the 22d.

“Q. You transferred \$62,500 to the Bank of

California, and \$20,000 to Chicago between those dates; that would make \$82,500?

A. If we did transfer that much,—we had \$55,000 I remember when I testified before.”

Whereupon the fact was admitted by opposing counsel. [103]

It was thereupon agreed that the Court might take judicial notice of the laws of Washington relative to the deposit of funds by the city treasurer, and respecting the local improvement warrants, and all questions involved in this case.

Defendants then introduced in evidence the records in certain causes pending in the United States District Court for the Western District of Washington, Southern Division, both determined and undetermined; in which preferred claims were asserted against the defendant bank and its receiver. The facts shown by the records in these various suits are briefly as follows:

1. Anna E. McCormick vs. United States National Bank and A. R. Titlow, receiver, in equity, No. 24, in which a preferred claim in the sum of \$15,245.63 was sought to be established as representing the proceeds of certain warrants which the plaintiff in that suit deposited with the defendant bank for collection and remittance, and which the complaint alleges were collected by the defendant bank in February and April, 1914, but that the bank had failed to remit any part of such proceeds to the plaintiff. The answer in that case denied that the United States National Bank received any actual

cash out of the transaction in question, but alleged that it obtained only a credit in other banking institutions, which credits were exhausted prior to the insolvency of the defendant bank. The answer further set up the pendency of various suits against the bank for preferred claims, and asked that if the defendants were found by the Court to hold in trust for complainant the sum mentioned in the complaint, or any part of it, that the Court should not enter judgment against the defendants except for such proportion of the lowest amount of each on hands between the date of the transaction mentioned in the complaint and the insolvency of [104] the bank, as complainant might be entitled to ratably with other claims which might be established as preferred. This cause was tried June 22, 1915, and was being held under advisement by the Court at the time of the trial of the principal case.

2. A cause entitled John E. Sundquist vs. Clinton A. Snowden, receiver, to recover the sum of \$1296 deposited by plaintiff with the United States National Bank on August 30, 1914, as a special deposit for the purpose of paying off a mortgage. This cause was tried in February, 1915, and a decree entered for plaintiff for the full amount claimed.

3. A cause entitled Frank P. McKinney as receiver of Olympia Bank & Trust Co., vs. A. R. Titlow as receiver of the U. S. National Bank of Centralia, in equity, No. 32, asserting a preferred claim for \$36,550.00, alleged to have been transferred from the Olympia Bank & Trust Co. to the United States National Bank in August and September, 1914, to be

held by the U. S. Bank as a special deposit to be returned to the Olympia bank after a certain examination of the U. S. bank's affairs had been made by the bank examiner. The answer denied the preferred character of the claim and stated that if any transfer of funds from the Olympia bank to the U. S. National were made, it was for the purpose of paying for commercial paper. An intervening complaint by certain stockholders of the Olympia Bank & Trust Co. was also filed in that case, asserting a preferred claim against the U. S. National to the extent of about \$86,000, on the ground that that represented funds obtained by the U. S. National Bank from the Olympia Bank during August and September, 1914, when it was alleged the U. S. National Bank was insolvent and known to be insolvent by its officers and directors, and further that the [105] funds so obtained from the Olympia bank were obtained through the fraud of the U. S. National bank. The answer denied the allegations as to insolvency and fraud and denied that the plaintiff was entitled to the allowance of any greater claim than the sum of about \$16,000 and alleged that plaintiff was entitled only to a general claim for that amount. This cause was at issue at the time of the trial of the City of Centralia vs. U. S. National Bank.

4. A cause entitled Continental & Commercial National Bank of Chicago vs. U. S. National Bank and A. R. Titlow as receiver, in equity No. 38, in which the plaintiff asserted a preferred claim for \$5166.67 as the proceeds of a note forwarded to the U. S. bank on August 25, 1914, and collected by it

shortly thereafter, the proceeds of which the defendant bank failed to remit. The answer in that case denied that the note was forwarded for collection and remittance, and asserted that it was for collection and credit and that credit was given. This cause was at issue at the time of the trial of the principal case.

5. A cause entitled Nicholas Petrinovich v. A. R. Titlow as receiver, in equity No. 37, in which a preferred claim for \$150.00 was asserted for the proceeds of a check alleged to have been deposited on September 15, 1914, by the plaintiff with the U. S. National Bank for collection only, upon which collection was made, but the bank had failed to pay the proceeds to plaintiff. The answer denied the preferred character of the claim and alleged that a certificate of deposit had been issued to plaintiff in payment of the check. The reply denied the affirmative matter in the answer. This cause was at issue at the time of the trial of the principal case.

OLDHAM & GOODALE,
Defendant's Attorneys. [106]

Order Approving Statement of Evidence.

The defendants and appellants having lodged in the clerk's office on February 11, 1916, their proposed statement of evidence on appeal herein, and having notified the plaintiff and its solicitors of such lodgment, and having named the 2d day of March as the time for the presentation of such statement of evidence to the Court for approval; and the plaintiff and respondent having on March 1, 1916, filed cer-

tain objections and proposed amendments to the statement of testimony theretofore filed by the defendants; and the undersigned, being the Judge before whom the cause was tried, being absent from the district on said 2d day of March, 1916, and the parties having stipulated that the time for the presentation of said proposed statement, together with the objections and proposed amendments thereto, might be extended until such time after the return of the undersigned to the district as might be satisfactory to the parties and to the Court, which extension or extensions of time were and are hereby allowed; and the parties having this day appeared in open court by their respective solicitors, and the foregoing statement of evidence having been made true, complete and properly prepared [107] under the direction of the Court, it is

ORDERED that the said statement of evidence be and it is hereby approved.

DONE IN OPEN COURT this 15th day of May, 1916.

EDWARD E. CUSHMAN,
Judge.

Approved:

S. H. PILES et al.,
Solicitors for Plaintiff,
OLDHAM & GOODALE,
Solicitors for Defendants.

(Filed May 15, 1916.) [108]

Petition for Appeal.

Come now the defendants A. R. Titlow, as receiver

of the United States National Bank of Centralia and *the United States National Bank of Centralia* and feeling themselves aggrieved by the final decree entered in the above-entitled court and cause on the 23d day of August, 1915, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Defendants.

(Filed Feb. 11, 1916.) [109]

Assignments of Error.

Now, on this 11th day of February, 1916, come the defendants, United States National Bank of Centralia, Washington, and A. R. Titlow, as receiver of the United States National Bank of Centralia, by their solicitors, R. P. Oldham and R. C. Goodale, and say that the decree entered in the above-entitled cause on the 23d day of August, 1915, is erroneous and unjust to them:

1. Because the District Court erred in finding and adjudging that the deposit of funds of the city with the defendant, United States National Bank of Centralia, without obtaining the bond required by

the statutes of the State of Washington to secure their repayment, was sufficient to establish a trust relation or any other relation than that of debtor and creditor between the United States National Bank and the City of Centralia, or to give rise to a preferred claim against the bank upon its insolvency and failure to repay such funds.

2. Because the District Court erred in finding and adjudging that the sum of \$50,911.88, representing the proceeds of the sale of water bonds of the plaintiff city, or any part of such sum, was ever actually traced into the possession of the defendant bank or its receiver, or resulted in augmenting the assets of the bank coming into the hands of the receiver, or was used for any other purpose than the payment of the debts of the defendant, United States National Bank of Centralia.

3. Because the District Court erred in rendering a decree allowing a preferred claim to the plaintiff in the sum of \$44,553.09, which decree is contrary to the testimony and against the law, because the equities of the case entitled the defendants to a decree of dismissal. [110]

4. Because, even if the circumstances under which the plaintiff city's funds were deposited originally were such as to entitle it to a preferred claim, the District Court erred in finding and adjudging that that claim should be paid in full, and in directing the defendants to pay it without first ascertaining what proportion, if any, of the funds of the defendant bank on hand at the time of its failure was properly applicable to the payment of this claim,

in preference to other preferred claims which the evidence shows were and are being urged against the defendant bank and its receiver.

5. Because, even if the proof showed that the circumstances under which the plaintiff's funds were originally deposited with the defendant bank were such as to create a preferred claim, and the funds were sufficiently traced so that that right to a preferred claim still subsisted at the time of the failure of the bank, the District Court nevertheless erred in finding and adjudging that the plaintiff was entitled to a preferred claim in any greater sum than the lowest amount of actual cash in the vaults of the defendant bank at any time between the date of the City's deposit and the day of the bank's failure.

WHEREFORE the defendants pray that the decree be reversed and the District Court be directed to dismiss the bill, and for such other relief as the defendants are entitled to in equity.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for Defendants.

(Filed Feb. 11, 1916.) [111]

Order Allowing Appeal.

The above-named defendants heretofore filed their assignment of errors and petition for appeal from the final decree herein and it appearing that the defendants have been directed by the Comptroller of the Currency of the United States of America to take such appeal; now, therefore, it is hereby

ORDERED that the petition for appeal be granted and the appeal is hereby allowed. It is

FURTHER ORDERED that the defendant shall not be required to furnish any security upon said appeal.

Dated this 11th day of February, 1916.

EDWARD E. CUSHMAN,

Judge.

(Filed Feb. 11, 1916.) [112]

The United States Circuit Court of Appeals for the Ninth Circuit. ..

THE CITY OF CENTRALIA, a Municipal Corporation,

Plaintiff and Respondent,

vs.

THE UNITED STATES NATIONAL BANK OF
CENTRALIA, a Banking Association, and
A. R. TITLOW, as Receiver of Said Bank,
Defendants and Appellants.

Citation on Appeal (Copy).

United States of America,—ss.

To the City of Centralia, a Municipal Corporation,
Greeting:

You are hereby notified that in a certain cause in equity in the United States District Court for the Western District of Washington, Southern Division, wherein the City of Centralia, a municipal corporation, is plaintiff, and The United States National Bank of Centralia, a banking association, and A. R. Titlow, as receiver of said bank, are defendants,

being cause No. 25-E., an appeal has been allowed to the defendants to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree entered in said cause on the 23d day of August, 1915, and you are therefore hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, in the State of California, within thirty days from the date of this citation, to show cause, if any there be, why the said final decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of said United States District Court this 11th day of February, 1916.

[Seal] EDWARD E. CUSHMAN,
Judge.

Due service of the foregoing citation is hereby admitted by the plaintiff by its solicitors of record this 17th day of February, 1916.

PILES, HOWE & CAREY and
W. N. BEALS,

Solicitors for Plaintiff,
City of Centralia, a Municipal Corporation.
By S. H. P.

(Filed Feb. 18, 1916.) [112½]

Certificate (of Comptroller) Directing Appeal.

To A. R. Titlow, Receiver of the United States
National Bank of Centralia, and United States
National Bank of Centralia:

You are hereby directed to appeal to the Circuit

Court of Appeals for the Ninth Circuit from the judgment of the District Court for the Western District of Washington, Southern Division, entered in the above-entitled cause on August 23d, 1915.

WITNESS the Honorable JOHN SKELTON WILLIAMS, Comptroller of the Currency, this 1st day of September, 1915.

JOHN SKELTON WILLIAMS,

Comptroller of the Currency.

[Seal of the Comptroller Currency Bureau, Treasury Department.]

By W. J. FOWLER,

Deputy Comptroller.

(Filed Nov. 3, 1915.) [113]

**Notice of Filing Defendant's Proposed Statement
of Evidence.**

To City of Centralia, a Municipal Corporation,
Plaintiff, Piles, Howe and Carey and W. N.
Beal, Esquires, It Attorneys:

You will please take notice that we have on this 11th day of February, 1916, lodged in the office of the clerk of the above-named court for your examination the statement of the evidence herein proposed by the defendants, A. R. Titlow, as receiver of the United States National Bank of Centralia, and the United States National Bank of Centralia to be included in the record on appeal in this cause.

AND YOU WILL PLEASE TAKE NOTICE that on the 2d day of March, 1916, at 10 o'clock A. M., at the courthouse of the above-named court in Tacoma, Washington, we will ask the Court or Judge

to approve the statement hereinbefore mentioned, a copy of which is herewith served upon you.

R. P. OLDHAM,

R. C. GOODALE,

Solicitors for the Defendants A. R. Titlow, as Receiver of the United States National Bank of Centralia, and The United States National Bank of Centralia.

(Acceptance of Service.)

(Filed Feb. 18, 1916.) [114]

Order for Preliminary Injunction.

This cause came on regularly and duly to be heard on the 25th day of January, 1915, on the motion of the complainant filed in this court and cause on the 19th day of January, 1915, for the issuance of a preliminary injunction. The complainant appeared by W. N. Beal, Esq., and Piles, Howe & Carey, its solicitors, and the defendant C. A. Snowden by A. R. Titlow, Esq., his solicitor. By consent of appearing parties the motion was heard on the verified bill of the complainant, and the oral testimony introduced by the appearing parties. And the Court, after considering the evidence submitted, and the arguments of counsel, and being now fully advised,—

IT IS ORDERED—*First*: That the defendant, C. A. Snowden, individually and as receiver of the defendant, The United States National Bank of Centralia, Washington, and each of his agents, servants and employees, be, and he and each of them hereby is, restrained and enjoined from applying by dividend, or otherwise, the sum of forty-four thousand

five hundred and fifty-three and 09/100 dollars (\$44,553.09) of the moneys now in his hands as such receiver, or in the possession of the comptroller of the currency, by reason of the receivership, to, or towards the payment in whole or in part of the indebtedness of the defendant bank, or otherwise, until the further order of this Court.

Second: That the defendant, C. A. Snowden, as such receiver, be, and he hereby is, directed and required to hold in his possession until the further order of this Court, the sum of forty-four thousand five hundred and fifty-three and 09/100 dollars (\$44,553.09), after making allowance for the expenses of administering the estate, to be paid to the complainant if it [115] shall be held upon the final hearing of this cause that the complainant is entitled to have said sum paid to it in preference to the general depositors and creditors of the defendant bank.

Third: That a preliminary writ of injunction in accordance with the provisions of this order be issued without the giving of any bond by the complainant; and that the defendant receiver certify to the comptroller of the currency the action of this Court in the premises.

To this order, and each and every part thereof, the defendant receiver duly excepted, and his exceptions are hereby allowed.

Done in open court this 8th day of February, 1915.

EDWARD E. CUSHMAN,

Judge.

(Filed Feb. 8, 1915.) [116]

Writ of Preliminary Injunction.

The United States of America,
Western District of Washington,—ss.

The President of the United States of America to
C. A. Snowden, Individually and as Receiver of
The United States National Bank of Centralia,
Washington, Greeting:

WHEREAS, the City of Centralia, a municipal corporation of the State of Washington, has filed on the equity side of the District Court of the United States, for the Western District of Washington, Southern Division, its bill of complaint against the United States National Bank of Centralia, Washington, and C. A. Snowden, as receiver of said bank, and has obtained an order for a preliminary injunction in said court and cause.

NOW, THEREFORE, we, having regard to the matters in said bill contained and the evidence submitted on the hearing of the motion of the complainant for preliminary injunction, do hereby command and strictly enjoin you, the said C. A. Snowden, individually and as receiver of The United States National Bank of Centralia, Washington, and each of your agents, servants and employees, from applying by dividend or otherwise, the sum of \$44,553.09 of the money now in your hands as such receiver, or in the possession of the Comptroller of the Currency by reason of your receivership, to or toward the payment in whole or in part of the indebtedness of the said The United States National Bank of Centralia, Washington, or otherwise, until the further order

of this Court; and you, the said C. A. Snowden, as such receiver, are hereby directed and required to hold in your possession until the further order of this Court, the sum of \$44,553.09, after making allowance for the expenses of administering the estate, of the moneys now in your hands as such receiver, [117] or in the possession of the Comptroller of the Currency by reason of your receivership, to be paid to the complainant, the City of Centralia, if it shall be held upon the final hearing of this cause that the said complainant is entitled to have said money paid to it in preference to the general depositors and creditors of the said The United States National Bank of Centralia, Washington, and you, the said C. A. Snowden, as such receiver, will make known unto the Comptroller of the Currency of the United States, the action of the Court in the premises; each of which commands and injunctions you are respectively required to observe and obey until our said District Court shall make further order in the premises.

Hereof fail not, under penalty of the law thence ensuing.

WITNESS, the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court, this the 9th day of February, in the year One Thousand Nine Hundred and Fifteen, and of American Inde-

pendence the One Hundred and Thirty-ninth year.

[Seal]

FRANK L. CROSBY,
Clerk of the District Court of the United States, for
the Western District of Washington.

E. C. Ellington,
Deputy Clerk, U. S. District Court, Western District
of Washington.

(Filed Feb. 10, 1915.) [118]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Writ of Preliminary Injunction on the therein-named United States National Bank of Centralia, Washington, by handing to and leaving a true and correct copy thereof with George Dysart as Vice-president, personally, at Tacoma, in said District, on the ninth day of February, A. D. 1915.

JOHN M. BOYLE,
U. S. Marshal.
By Ira S. Davisson,
Chief Deputy.

Marshal's fees, \$2.00 [119]

RETURN ON SERVICE OF WRIT.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Writ of Preliminary Injunction on the therein-named Clinton A. Snowden individually and as Receiver of United States National Bank of Centralia, by handing to and leaving a true and correct

copy thereof with Clinton A. Snowden, personally, at Centralia, in said District, on the 9th day of February, A. D. 1915.

JOHN M. BOYLE,

U. S. Marshal.

By Thos. J. Fleetwood,

Deputy.

Marshal's Fees, \$6.65.

*In the District Court of the United States, for the
Western District of Washington, Southern
Division.*

IN EQUITY—No. 25-E.

THE CITY OF CENTRALIA, a Municipal Corporation,

Plaintiff,

vs.

THE UNITED STATES NATIONAL BANK OF
CENTRALIA and A. R. TITLOW, as Receiver of Said Bank,

Defendants.

**Praeipie of the Plaintiff for Additional Portions of
the Record.**

To Frank L. Crosby, Clerk of said Court:

Please prepare, certify and transmit to the Clerk of the Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, a typewritten transcript of the record upon appeal in the above-entitled cause, containing in addition to the portions of the record requested by the defendants in their praecipe on file herein, the following (omitting all captions, endorse-

ments, verifications, etc., excepting file-marks) :

1. Order of the Court for preliminary injunction, filed in this court and cause on the 8th day of February, 1915.
2. Writ of preliminary injunction, filed in said court and cause on the 10th day of February, 1915, together with the return of the Marshal thereon.
3. Praecipe of plaintiff for additional portions of the record.

PILES & HOWE,
Attorneys for Plaintiff.

(Acceptance of service.)

(Filed Mar. 2, 1916.) [120]

Stipulation and Order as to Exhibits.

IT IS HEREBY STIPULATED by and between the parties hereto that all original exhibits introduced on the final hearing of this cause be transmitted to and filed with the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, for inspection by that court, and that none of said exhibits except those set forth in the statement of the testimony as now settled and now on file herein shall be copied in the printed record, but the residue thereof shall be treated as a part of the record in this cause upon the hearing of the appeal herein.

Dated at Seattle this 17th day of May, 1916.

WM. BEALS and
PILES, HOWE & CAREY,
Solicitors for Plaintiff and Respondent.
OLDHAM & GOODALE,
Solicitors for Defendants and Appellants.

It is so ordered.

Dated this 17th day of May, 1916.

EDWARD E. CUSHMAN,
Judge.

(Filed May 18, 1916.) [120a]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return the foregoing and attached to be a full, true and correct transcript of the papers and proceedings in the case of City of Centralia vs. United States National Bank of Centralia, Washington, and A. R. Titlow, as receiver of said bank, lately pending in this court, pursuant to the praecipes of counsel filed herein, as the originals thereof appear on file in this court at Tacoma, in the District aforesaid.

I further certify that I have attached hereto the original Citation issued in said cause.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and

charges incurred and paid into my office by and on behalf of the appellant herein, for making the record, certificate and return to the United States Circuit Court of Appeals, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate and return, 281 folios @ 15¢ ea. (required by praecipe of solicitors for appellants) and paid by them.....42.15

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate and return, 12 folios @ 15¢ ea. (as required by praecipe of solicitors for appellee and paid by them)..... 1.80

Clerk's certificate to transcript, 2 folios and seal, paid by solicitors for appellants..... .50

[121]

Clerk's certificate and seal as to original exhibits..... .35

ATTEST MY OFFICIAL SIGNATURE AND THE SEAL OF THIS COURT, AT Tacoma, in the District aforesaid, this 15th day of June, A. D. 1916.

[Seal]

FRANK L. CROSBY,

Clerk.

By E. C. Ellington,
Deputy Clerk. [122]

*The United States Circuit Court of Appeals for the
Ninth Circuit.*

THE CITY OF CENTRALIA, a Municipal Corporation,

Plaintiff and Respondent,

vs.

THE UNITED STATES NATIONAL BANK OF
CENTRALIA, a Banking Association, and
A. R. TITLOW, as Receiver of Said Bank,
Defendants and Appellants.

Citation on Appeal (Original).

United States of America,—ss.

To the City of Centralia, a Municipal Corporation,
Greeting:

You are hereby notified that in a certain cause in equity in the United States District Court for the Western District of Washington, Southern Division, wherein the City of Centralia, a municipal corporation, is plaintiff and The United States National Bank of Centralia, a banking association, and A. R. Titlow, as receiver of said bank, are defendants, being cause No. 25-E., an appeal has been allowed to the defendants to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree entered in said cause on the 23d day of August, 1915, and you are therefore hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco in the State of California, within thirty days from the date of this citation, to show cause, if

any there be, why the said final decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of said United States District Court this 11th day of February, 1916.

[Seal]

EDWARD E. CUSHMAN,

Judge.

Due service of the foregoing citation is hereby admitted by the plaintiff by its solicitors of record this 17 day of February, 1916.

PILES, HOWE & CAREY and

W. N. BEAL,

Solicitors for Plaintiff, City of Centralia, a Municipal Corporation.

Per S. H. P.

[Endorsed]: Original. In Equity. No. 25-E. In the District Court of the United States for the Western District of Washington, *Northern* Division. The City of Centralia, Plaintiff, vs. The United States National Bank of Centralia et al., Defendants. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 18, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the District Court of the United States, for the
Western District of Washington, Southern Di-
vision,*

and

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

IN EQUITY—No. 25—E.

THE CITY OF CENTRALIA, a Municipal Corpo-
ration,

Plaintiff and Respondent,

vs.

THE UNITED STATES NATIONAL BANK OF
CENTRALIA, a Banking Association, and
A. R. TITLOW, as Receiver of Said Bank,
Defendants and Appellants.

**Order Directing Transmission of Plaintiff's Original
Exhibit No. 11 to Appellate Court.**

On reading the stipulation filed herein between the parties that plaintiff's original Exhibit No. 11 be sent to the Circuit Court of Appeals in its original form,

IT IS ORDERED BY THE COURT that the clerk of this court be and he is hereby instructed to forward said original Exhibit No. 11 to the Circuit Court of Appeals for the Ninth Circuit.

DONE IN OPEN COURT this 15 day of May,
1916.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Original. In Equity. No. 25-E. In the District Court of the United States for the Western District of Washington, Southern Division. The City of Centralia, a Municipal Corporation, Plaintiff and Respondent, vs. The United States National Bank of Centralia et al., Defendants and Appellants. Order In re Exhibit No. 11. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. May 15, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the District Court of the United States, for the
Western District of Washington, Southern Di-
vision,*

and

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

IN EQUITY—No. 25-E.

THE CITY OF CENTRALIA, a Municipal Corpo-
ration,

Plaintiff and Respondent,

vs.

THE UNITED STATES NATIONAL BANK OF
CENTRALIA, a Banking Association, and
A. R. TITLOW, as Receiver of Said Bank,
Defendants and Appellants.

**Stipulation Re Transmission of Plaintiff's Original
Exhibit No. 11 to Appellate Court.**

IT IS HEREBY STIPULATED by and between
counsel for plaintiff and respondent and counsel for

defendants and appellants, that original Exhibit No. 11 introduced on the final hearing of this cause in this court, be transmitted and filed with the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, and that said exhibit be not copied into the printed record or printed or reproduced, but the same shall be treated as a part of the record in this cause upon the hearing of the merits in said appeal, which said exhibit is a transcript from the books of the United States National Bank of Centralia, showing the state of the account between that bank and the National Bank of Commerce, between the dates of July 11, 1914, and September 19, 1914, both inclusive, and consists of six handwritten folio pages.

Dated at Seattle this 28th day of February, 1916.

W. N. BEAL and
PILES & HOWE,

Solicitors for Plaintiff and Respondent.

OLDHAM & GOODALE,

Solicitors for Defendants and Appellants.

[Endorsed]: Copy. In Equity—No. 25-E. In the District Court of the United States for the Western District of Washington, Southern Division. City of Centralia, a Municipal Corporation, Plaintiff, vs. United States National Bank of Centralia et al., Defendants. Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Mar. 2, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

[Endorsed]: No. 2821. United States Circuit Court of Appeals for the Ninth Circuit. The United States National Bank of Centralia, a Banking Association, and A. R. Titlow, as Receiver of Said Bank, Appellants, vs. The City of Centralia, a Municipal Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed June 29, 1916.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 2821.

THE UNITED STATES NATIONAL BANK OF
CENTRALIA, a Banking Association, and
A. R. TITLOW, as Receiver of the United
States National Bank of Centralia,
Appellants,

vs.

THE CITY OF CENTRALIA, a Municipal Corpo-
ration,

Respondent.

**Order Enlarging Time for Filing of Record to and
Including June 30, 1916.**

This cause having come on for hearing on this date

upon appellants' motion for an order enlarging the time within which appellants are required to file their record on appeal in this cause and docket the case with the clerk of this court, and good cause being shown, it is

ORDERED that appellants' time for filing the record on appeal in this cause and docketing the case with the clerk of this court be, and it is hereby, enlarged to and including the 30th day of June, 1916.

Dated at San Francisco this 28 day of February, 1916.

WM. B. GILBERT,
Judge of the United States Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: 2821. In the United States Circuit Court of Appeals for the Ninth Circuit. The United States National Bank of Centralia et al., Appellants, vs. The City of Centralia, a Municipal Corporation, Respondent. Order Enlarging Time for Filing Record. Filed Feb. 28, 1916. F. D. Monckton, Clerk. Refiled Jun. 29, 1916. F. D. Monckton, Clerk.

